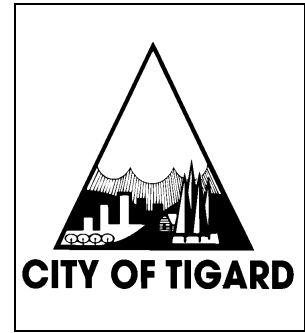

TIGARD CITY COUNCIL
BUSINESS MEETING

October 9, 2001 6:30 p.m.

TIGARD CITY HALL
13125 SW HALL BLVD
TIGARD, OR 97223



PUBLIC NOTICE:

Anyone wishing to speak on an agenda item should sign on the appropriate sign-up sheet(s). If no sheet is available, ask to be recognized by the Mayor at the beginning of that agenda item. Visitor's Agenda items are asked to be two minutes or less. Longer matters can be set for a future Agenda by contacting either the Mayor or the City Manager.

Times noted are estimated; it is recommended that persons interested in testifying be present by 7:15 p.m. to sign in on the testimony sign-in sheet. Business agenda items can be heard in any order after 7:30 p.m.

Assistive Listening Devices are available for persons with impaired hearing and should be scheduled for Council meetings by noon on the Monday prior to the Council meeting. Please call 503-639-4171, Ext. 309 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

Upon request, the City will also endeavor to arrange for the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and
- Qualified bilingual interpreters.

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. on the Thursday preceding the meeting by calling: 503-639-4171, x309 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

SEE ATTACHED AGENDA

A G E N D A
TIGARD CITY COUNCIL BUSINESS MEETING
OCTOBER 9, 2001

6:30 PM

- STUDY SESSION
 - > LIBRARY SITE DISCUSSION
 - > METRO GREENSPACES
 - Senn Property
 - Other Properties Under Consideration
- EXECUTIVE SESSION: The Tigard City Council will go into Executive Session to discuss real property transaction negotiations under ORS 192.660(1e). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(3), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

7:30 PM

1. BUSINESS MEETING
 - 1.1 Call to Order - City Council & Local Contract Review Board
 - 1.2 Roll Call
 - 1.3 Pledge of Allegiance
 - 1.4 Council Communications & Liaison Reports
 - 1.5 Call to Council and Staff for Non-Agenda Items
2. VISITOR'S AGENDA (Two Minutes or Less, Please)
 - Tigard High School Student Envoy Nathan Leamy
3. CONSENT AGENDA: These items are considered to be routine and may be enacted in one motion without separate discussion. Anyone may request that an item be removed by motion for discussion and separate action. Motion to:
 - 3.1 Receive & File:
 - a. Council Calendar
 - b. Tentative Agenda
 - 3.2 Adjust the Fee for the Cost of Accounting and Processing of Checks Returned by Banking Institutions for Non-Payment – Resolution No. 01- _____

- 3.3 Approve Budget Amendment #5 to the Fiscal Year 2001-02 Budget to Transfer Funds to Pay an Assessment by the League of Oregon Cities for Legal Costs Associated with Qwest Franchise Fees - Resolution No. 01- _____
- 3.4 Approve Budget Amendment #6 to the Fiscal Year 2001-02 Budget to Transfer Funds from Contingency to Make a Contribution to Community Partners for Affordable Housing for the Village at Washington Square Project - Resolution No. 01- _____
- 3.5 Establish a Procedure to Grant City Sponsorship to Community Events and Replace Resolution No. 00-01 – Resolution No. 01- _____
- 3.6 Approving an Amendment to the Non-exclusive Cable Television Services Franchise Agreement Granted to TCI of Tualatin Valley, Inc., by Extending the Deadline for Construction of the Required System Upgrade - Resolution No. 01- _____
- 3.7 Approve a Policy on Per Diem Allowances for the City Council and Executive Staff when Attending National Conferences – Resolution No. 01-_____
- 3.8 Local Contract Review Board
 - a. Award a Personal Services Contract to Precision Graphics for Cityscape Newsletter Printing Services
 - b. Award Contract to Provide Fuel at Captive Sites and Foreign Sites through the Use of Commercial Automated Fuel Systems to Bretthauer Oil Company
 - c. Award Contracts for Laptop Computers to ESP Technology, Sterling Computers, and Alsea Computers
- *Consent Agenda - Items Removed for Separate Discussion: Any items requested to be removed from the Consent Agenda for separate discussion will be considered immediately after the Council has voted on those items which do not need discussion.*

4. PUBLIC HEARING – CONSIDER A RESOLUTION APPROVING A SUPPLEMENTAL BUDGET TO FISCAL YEAR 2001-2002 FOR THE PARKS SYSTEM DEVELOPMENT CHARGE FUND AND THE UNDERGROUND UTILITY FUND
 - a. Open Public Hearing
 - b. Staff Report: Finance Staff
 - c. Public Testimony
 - d. Staff Recommendation
 - e. Council Discussion, Questions, Comments
 - f. Close Public Hearing
 - g. Council Consideration: Resolution No. 01 - _____

5. TIGARD BEYOND TOMORROW VISION UPDATE
 - a. Staff Report (Introduction) – Administration Staff

6. CONSIDER AN ORDINANCE AMENDING CHAPTER 2.16 OF THE TIGARD MUNICIPAL CODE TO UPDATE STATUTORY REFERENCES AND CLARIFY THE POWERS OF THE MUNICIPAL JUDGE AND PRO TEMPORE MUNICIPAL JUDGE
 - a. Staff Report: Finance Staff
 - b. Council Discussion, Questions, Comments
 - c. Council Consideration: Ordinance No. 01- _____

7. CONSIDER:
 - 7.1 AN ORDINANCE AMENDING SECTION 12.10.180 AND ADDING NEW SECTIONS 12.10.300, 12.10.310, 12.10.320, 12.10.330, AND 12.10.340 OF THE TIGARD MUNICIPAL CODE
 - a. Staff Report: Public Works Staff
 - b. Council Discussion, Questions, Comments
 - c. Council Consideration: Ordinance No. 01- _____
 - 7.2 A RESOLUTION AMENDING THE RULES, RATES, AND REGULATIONS GOVERNING WATER SERVICE HANDBOOK
 - a. Staff Report: Public Works Staff
 - b. Council Discussion, Questions, Comments
 - c. Council Consideration: Resolution No. 01- _____

8. CONSIDER AN ORDINANCE AMENDING SECTION 2.28.020 OF THE TIGARD MUNICIPAL CODE TO REMOVE THE REQUIREMENT THAT RESERVE OFFICERS MUST BE UNDER THE AGE OF 60
 - a. Staff Report: Police Staff
 - b. Council Discussion, Questions, Comments
 - c. Council Consideration: Ordinance No. 01- _____

9. CONSIDER AN ORDINANCE AMENDING SECTION 10.50.080 OF THE TIGARD MUNICIPAL CODE CHANGING SUBSECTION 10.50.080 (6) PROHIBITING MOVEMENT OF OVERSIZE LOADS ON CITY STREETS BEFORE 9 AM AND AFTER 3 PM
 - a. Staff Report: Police Staff
 - b. Council Discussion, Questions, Comments
 - c. Council Consideration: Ordinance No. 01- _____

10. CONSIDER AN ORDINANCE AMENDING CHAPTER 14.20 OF THE TIGARD MUNICIPAL CODE REGARDING MOVING OF BUILDINGS
 - a. Staff Report: Community Development Staff
 - b. Council Discussion, Questions, Comments
 - c. Council Consideration: Ordinance No. 01- _____

11. CONSIDER AN ORDINANCE AMENDING TITLES 1 AND 2 OF THE TIGARD MUNICIPAL CODE BY ADDING NEW SECTIONS AND AMENDING EXISTING SECTIONS PERTAINING TO GENERAL GOVERNMENT AND ADMINISTRATION AND PERSONNEL
 - a. Staff Report: Administration Staff
 - b. Council Discussion, Questions, Comments
 - c. Council Consideration: Ordinance No. 01- _____

12. COUNCIL LIAISON REPORTS

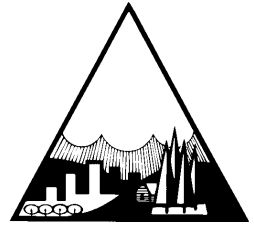
13. NON AGENDA ITEMS

14. EXECUTIVE SESSION: The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(3), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

15. ADJOURNMENT

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MEMORANDUM



TO: Honorable Mayor & City Council

FROM: Bill Monahan, City Manager

RE: Library Site Discussion

DATE: October 2, 2001

Several activities are now taking place as we approach completion of the new library model, scheduled for October 15, 2001. During the Study Session portion of the October 9, 2001, City Council meeting, staff will bring City Council up to date on these activities. They are:

1. ***The effort to obtain an option on the proposed site.*** We will give a status report on the efforts to secure an option from Fred Fields. Some of the discussion could take place in Executive Session if negotiations have proceeded to that level.
2. ***Addressing the land use regulations and wetland regulations that apply to the proposed site.*** The Community Development Department and Engineering Department have been reviewing the regulations that must be addressed to utilize the proposed site for a new library. Staff will explain the process necessary to explore making the zoning suitable for the proposed use and discuss the process and timelines required to address the wetlands issues.
3. ***Assessment of site limitations.*** Staff will identify the limitations that exist on the site, which dictate location of the building and improvements (road right-of-way location, wetlands, setback from streams, etc.)
4. ***Suggestion by the Tigard-Tualatin School District that the City consider the colocation of a magnet school at the site.*** The School District Facility Planning Committee has been discussing the concept of a magnet school. Last week, I attended a meeting of the Facility Committee to bring them up to date on our efforts to site a new library. I requested that the District provide a written proposal for City Council review and consideration. The magnet school concept is one that I am somewhat familiar with, based upon information I have received over the last couple of weeks. However, all of the components of the program are not clear. I have asked the District to attempt to clarify the proposal within a memo that I can bring to City Council on October 9, 2001.

Additional information will be sent to City Council in the Friday newsletter. Attached to this memo is a memo from Jim Hendryx dated September 26, 2001, which clarifies some erroneous information provided to the City Council by the project architect on September 25, 2001.

\\TIG333\USR\DEPTS\ADMPACKET\20011009\0000 LIBRARY STUDY SESSION MEMO.DOC



MEMORANDUM

CITY OF TIGARD, OREGON

13125 SW Hall Boulevard
Tigard, Oregon 97223
(503) 639-4171
Fax 684-7297

TO: Tigard City Council

FROM: Jim Hendryx

DATE: September 26, 2001

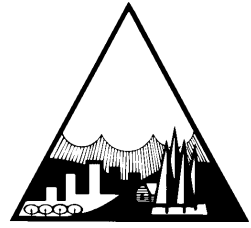
SUBJECT: Library Site

Staff has been working continuously with the Library Architectural and Site Committee regarding conceptual plans as planning for a new library has progressed. It is important to clarify some factors. During the September 25, 2001 City Council meeting, site specific development questions came up which have not been fully evaluated. It is possible that potentially erroneous information regarding the flood plain and the ultimate improvement of Hall Boulevard were inadvertently provided.

Detailed analysis will be required before a final determination can be made of what public improvements will be necessary or can be made on the site.

It should be noted that the project is in the early design phase. Discussions have been centered on conceptual plans. It is important to keep the discussion to the conceptual stage at this point because the City does not have sufficient information or a complete application on which to answer technical site improvement questions.

MEMORANDUM



TO: Honorable Mayor & City Council

FROM: Bill Monahan, City Manager

RE: Metro Greenspaces

DATE: October 2, 2001

Further developments have occurred in the last couple of weeks regarding Metro's efforts to acquire properties in the City of Tigard through the Greenspaces Program. The activities involve:

1. The Stanley, Conklin, and Gage property, which have been promoted by the Trust for Public Lands, and
2. The Senn property.

During the Study Session portion of the October 9, 2001, City Council meeting I will provide City Council with an update on these properties.

The Stanley, Conklin, Gage properties – On September 24, 2001, I provided City Council with a memo along with Dick Shouten's e-mail discussing these properties. On September 25, I received a telephone call from Jim Desmond, Metro staff responsible for the Greenspaces Program. Mr. Desmond advised me that through informal discussions with members of the Metro Council, it was his opinion that acquisition of these three properties through the Metro Greenspaces Program is unlikely. He advised me that these properties are not presently on the list of eligible properties. In addition, he shared with me the results of an informal poll that he has taken with Metro Councilors, which indicated to him that there is not sufficient support within the Council to add these properties to the list of eligible acquisitions.

It is possible that by October 9, 2001, the Metro Council will take a formal position on these properties.

Senn property – The Senn property is located in Tigard in the Metzger area. Over the past year, efforts have been underway through the Three Rivers Land Conservancy and neighbors of the site to package acquisition of the property. Clean Water Services and the City have also been consulted. Attached is a letter dated September 26, 2001, where Jim Desmond lays out the framework of a deal that Metro is actively working. The components of the deal include Clean Water Services and the City of Tigard

providing \$200,000 in a local match to assist Metro in the acquisition. City staff has consulted with Craig Dye of Clean Water Services to better understand the \$200,000 commitment. It is our understanding that the City share of the local match can come from funding that the City receives from Clean Water Services.

During the Study Session, staff will bring the City Council up to date on the components of the potential purchase and seek City Council direction. Metro would like to receive a response from Tigard by October 26. Please note that Three Rivers Land Conservancy and the local neighborhood are attempting to raise \$100,000 to contribute to the purchase. It is our understanding that some funds have been raised, however, it is not unlikely that the Conservancy and the neighborhood request that Tigard consider providing some additional funding. Staff will update City Council on availability of City funds. Finally, Metro is asking that the City consider assuming sole responsibility for the maintenance, management, and operation of the Senn property. Staff will discuss the implications of this with City Council and seek preliminary direction.

If additional information becomes available on any of these sites prior to October 9, that information will be provided to Council.

Attachments

c: Jim Hendryx
Ed Wegner



METRO

September 26, 2001

William Monahan
City Manager
City of Tigard
13125 SW Hall Boulevard
Tigard, Oregon 97223

Re: Senn Property
9750 SW 74th Ave

Dear Mr. Monahan:

As you know, Metro and Three Rivers Land Conservancy are currently negotiating to acquire the above referenced property, commonly known as the Senn property. This is a 9.36-acre parcel located in Tigard near the headwaters of the south fork of Ash Creek. A 1994 City of Tigard Natural Areas Inventory described this site as a high quality natural area and recommended its protection.

Metro's Fanno Creek Corridor refinement plan adopted following the passage of Metro's Open Spaces, Parks and Streams bond measure in 1995 calls for Metro to acquire properties along the main stem of Fanno Creek as well as within the upper Fanno Creek watershed and within headwaters areas. An important difference between main stem and upper watershed/headwaters sites is that Metro is only authorized to provide up to 75 percent of the acquisition cost of headwaters sites, with local jurisdictions and/or non-profit partners required to provide the remaining 25 per cent match. In certain special cases, Metro can provide up to 10% (but not more than \$50,000), above appraised value.

The appraised value of the property is \$755,000. The seller's asking price is \$1,137,047. However, Metro and Three Rivers Land Conservancy now believe that the owner may be convinced to sell the property for approximately \$905,000. Due to this site's high natural resource value, in this case Metro is willing to provide up to \$605,000 of the estimated acquisition price (approximately 80% of the appraised value, thus utilizing our limited authority to pay above appraised value in special cases). Three Rivers Land Conservancy is working with the local neighborhood to raise up to \$100,000 to contribute to the purchase. This effort represents an extraordinary commitment from Three Rivers and the community and we are extremely appreciative of their efforts. Metro is requesting that Clean Water Services and the City of Tigard provide a total of \$200,000 in local match funds (approximately 27% of the appraised value and approximately 22% of the estimated purchase price) to close the gap between the estimated \$905,000 purchase price and the \$705,000 in acquisition funds that would be provided by Metro and Three Rivers (and its donors).

William Monahan
September 26, 2001
Page 2

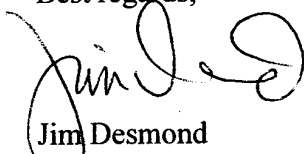
As a condition to closing this transaction, Metro is requesting that the City of Tigard enter into an intergovernmental agreement providing that the City of Tigard will assume sole responsibility for maintenance, management and operation of the property, consistent with the Metro Open Spaces Bond Measure and implementing Resolutions, and will add the property to the City of Tigard's natural area park inventory. In regard to the City of Tigard's anticipated responsibilities under such an agreement, I would refer you the existing IGA between Metro and the City of Tigard for the Lowery property, executed in August, 1999. This document will serve as an example of the type and kind of management responsibilities and obligations envisioned for the City of Tigard under such an agreement.

Title to the property may be held in several ways. Clean Water Services and Three Rivers Land Conservancy have indicated that they are not interested in holding any portion of title to this property. Metro is willing to hold up to 100% of title to the property if the City prefers. Or, the City may take title to the property as a tenant in common with Metro, owning a fractional interest in the property proportionate to the City's contribution to the purchase price. Assuming an estimated purchase price of \$905,000, Metro's minimum share of the title would be approximately 67 percent, with the City eligible to share up to approximately 33% of the title.

The effort to purchase the Senn property represents a unique partnership involving public, private, non-profit groups and citizens. With the exception of an existing single family residence situated on a portion of the site (which can easily be razed) this property represents one of the last remaining large blocks of undeveloped land available for acquisition on any of the Fanno Creek tributaries. The parcel's size, sloping topography, and natural vegetation directly contribute to the water quality and quantity of Ash Creek, and consequently, to the water quality of Fanno Creek.

As we are anxious to conclude our negotiations on this property, it would be extremely helpful if the City of Tigard and Clean Water Services could respond to this proposal within the next 30 days. Thank you for your consideration. Please do not hesitate to contact me with any questions or concerns that you may have.

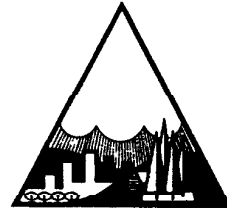
Best regards,



Jim Desmond
Manager
Open Spaces Acquisition Division
Regional Parks and Greenspaces

cc: Craig Dye, Clean Water Services
Jayne Cronlund, Three Rivers Land Conservancy
William Eadie, Metro

MEMORANDUM
CITY OF TIGARD, OREGON



TO: Jim Hendryx

FROM: Bill Monahan

A handwritten signature in black ink, appearing to read 'Bill Monahan', is written over the printed name.

DATE: September 24, 2001

SUBJECT: Dick Schouten Memo – Metro Greenspaces

Attached is an e-mail that was sent to Councilors Moore and Dirksen last week. A copy has been circulated to all council members. I expect there will be some discussion of this during the city council study session of September 25.

Please review the information provided by Washington County Commissioner Schouten. Commissioner Schouten is making a case that Metro should modify its list of Tigard properties to include both the Stanley and Conklin properties. In addition, since the package deal offered by the Trust for Public Lands includes the Gage property, it appears that he also supports Gage. He also refers, on page 9 of his report, to the Senn property.

I expect the city council will be looking for direction from staff on how to proceed to work with Commissioner Schouten, other Washington County Commissioners, and Metro to push for Commissioner Schouten's proposal. In order for our city council to be prepared, community development needs to prepare a memo in response to the issues raised. The memo should include the following:

1. Status of the Stanley, Conklin, Gage, and Senn properties in Tigard's master plans.
2. What we know about the status of the Senn property. (For your information, I have yet to receive a letter from William Eade of Metro presenting the Metro proposal for acquisition of this property.)
3. Any staff comments which would provide clarification or would correct comments made by Commissioner Schouten in his report.
4. A recommended course of action to initiate discussions with Metro staff prior to a meeting of elected officials. Such a meeting may help to identify the common ground on which we and the county and Metro staff have agreed prior to elected official discussions in preparation of a course of action.

From: Dick Schouten <Dick_Schouten@co.washington.or.us>
To: Tom Brian <Tom_Brian@co.washington.or.us>, Dennis Mulvihill
<Dennis_Mulvihill@co.washington.or.us>, "chosticka@earthlink.net" <chosticka@earthlink.net>,
"brian_more@pgn.com" <brian_more@pgn.com>, "skafoury@teleport.com" <skafoury@teleport.com>,
"craigd@ci.tigard.or.us" <craigd@ci.tigard.or.us>, Bill Gaffi <gaffib@usa-cleanwater.org>
Date: 9/20/01 4:12PM

<<Greenspaces.doc>> All:

Here is a draft memo I have prepared regarding possible Metro purchases of Bull Mountain properties. I look forward to your responses.

Dick Schouten

CC: Charlie Cameron <Charlie_Cameron@co.washington.or.us>

Copies to:

Mayor/Council

City Manager

Council File

Other:

e-mail -

Councilor's
Dirksen +
Moore

All:

A few months ago, Tom Brian asked a number of questions regarding openspaces in Washington County. Three of those questions are directly relevant to Metro's possible purchase of three properties (Stanley Trust, Conklin and Gage) in the Tigard area, all optioned by the Trust for Public Land.

Tom's three questions are below in bold italics, with my response following. For Tom's First Question, my answer is broken down into two parts, namely acquisitions per Metro's Website dated August 15th; and the latest updates I received on September 14th, 17th and 18th from Metro Councilor Hosticka, and/or the two principals in Metro's Openspaces Department, Charlie Ciecko and Jim Desmond.

Question 1. What openspace purchases has Metro currently made in Washington County under the 95 openspaces bond program?

The First part of my Answer to Tom's First Question per Metro's web page, last updated on August 15:

Below you will see Metro's Openspace Bond Program acquisitions as quoted from Metro's web site (last updated August 15, 2001). I added the capitalized text. This added text includes: what the regional acquisition areas are under the 1995 Bond; and how much the purchase totals are currently over or under the 1995 Bond targets.

"Regional natural areas

"Numbers in parentheses indicate the acreage acquired in each area as of August 15, 2001.

"1. Gales Creek (606 acres) - south of Forest Grove, acquired wetlands and riparian forests will offer wildlife habitat near the Tualatin River and increase habitat adjacent to Fernhill Wetlands."

THE 95 BOND ISSUE TARGET FOR GALES CREEK IS 775 ACRES. WE ARE CURRENTLY SHORT 169 ACRES.

"2. Jackson Bottom/McKay and Dairy creeks (73 acres) - acquisitions along these tributaries of the Tualatin River will support water-quality enhancement efforts in the Tualatin Basin and add wildlife habitat to the Jackson Bottom Management Area."

THE 95 BOND ISSUE TARGET FOR JACKSON BOTTOM/ETC. IS 335 ACRES. WE ARE CURRENTLY SHORT 262 ACRES.

"3. Tualatin River access points (385 acres) - public access in at least four locations along the Tualatin River will provide opportunities for canoeing, kayaking, fishing, picnicking and wildlife viewing."

THE 95 BOND ISSUE TARGET FOR THE TUALATIN RIVER ACCESS POINTS IS 265 ACRES. HERE WE ARE OVER THE TARGET BY 120 ACRES.

"4. Cooper Mountain (256 acres) - forested and open space areas provide significant wildlife habitat. The stands of oak and madrone trees that exist here are uncommon in the metropolitan area."

THE 95 BOND ISSUE TARGET FOR COOPER MOUNTAIN IS 425 ACRES. WE ARE CURRENTLY SHORT 169 ACRES.

"5. Rock Creek (109 acres) - a tributary of the Tualatin River, this creek flows through an area of rapid urban growth. Acquisitions will protect some of the natural features of the area, provide wildlife habitat, help maintain water quality and offer recreational opportunities."

THE 95 BOND ISSUE TARGET FOR ROCK CREEK IS 300 ACRES. WE ARE SHORT 191 ACRES.

"6. Forest Park buffer/ expansion (830 acres) - inholdings and adjacent buffer areas will be purchased to protect the future of Forest Park, a 5,000-acre park in urban Northwest Portland."

THE 95 BOND ISSUE TARGET FOR FOREST PARK IS 320 ACRES.
WE ARE CURRENTLY 500 ACRES OVER TARGET HERE.

"7. Willamette River Greenway (898 acres) - acquisitions along the greenway from Wilsonville to the Multnomah Channel adjacent to Sauvie Island will be considered. Fish and wildlife habitat protection, river access, scenic values and water-quality protection will be among factors used to purchase land along the greenway. Specific Willamette River Greenway projects include Multnomah Channel (326 acres), Willamette Cove (27 acres), Willamette Narrows (439 acres) and Canemah Bluff (129 acres)."

THE 95 BOND ISSUE TARGET FOR THE ENTIRE GREENWAY IS 1,100 ACRES. WE ARE CURRENTLY SHORT 202 ACRES.

"8. Tonquin geologic area (448 acres) - this area near Tualatin links to the Tualatin River National Wildlife Refuge and contributes scenic value to the cities of Wilsonville and Tualatin. It also features unique geologic evidence of prehistoric glacial flooding."

THE 95 BOND ISSUE TARGET FOR TONQUIN IS 275 ACRES. WE ARE OVER TARGET 173 ACRES.

"9. Tryon Creek linkages (43 acres) - stream greenways leading to Tryon Creek will help protect water quality in the watershed as well as support the integrity of Tryon Creek State Park."

THE 95 BOND ISSUE TARGET FOR TYRON IS 20 ACRES.
WE ARE CURRENTLY OVER TARGET HERE AT 23 ACRES.

"10. Newell Creek Canyon (145 acres) - located near Oregon City, the creek flows through a forested canyon. The creek, which originates on the campus of Clackamas Community College and flows into Abernathy Creek, is relatively short, but does support trout and salmon."

THE 95 BOND ISSUE TARGET FOR NEWELL CREEK IS 370 ACRES. WE ARE CURRENTLY SHORT THERE BY 225 ACRES.

"11. Clear Creek Canyon (492 acres) - this creek flows into the Clackamas River at Carver and supports a salmon fishery. The forest of conifers and hardwoods contributes to high water quality."

THE 95 BOND ISSUE TARGET FOR GALES CREEK IS 345 ACRES. WE ARE CURRENTLY EXCEEDING THE TARGET BY 147 ACRES.

"12. East Buttes/Boring Lava Domes (730 acres) - a group of extinct volcanoes and lava domes in north Clackamas and east Multnomah counties provide unique geographic character to the region, wildlife habitat and panoramic vistas."

THE 95 BOND ISSUE TARGET FOR EAST BUTTES, ETC. IS 550 ACRES. WE ARE EXCEEDING THE TARGET BY 180 ACRES.

"13. Columbia River shoreline (271 acres) - riparian forest and island habitat will be acquired west of the Sandy River."

THE 95 BOND ISSUE TARGET THE COLUMBIA SHORELINE IS 95 ACRES. AGAIN WE ARE EXCEEDING THE TARGET BY 180 ACRES.

"14. Sandy River Gorge (1,048 acres) - this wild and scenic waterway will provide important fish and wildlife habitat. Acquisitions along Sandy River tributaries will also offer water-quality benefits."

THE 95 BOND ISSUE TARGET FOR THE SANDY RIVER GORGE IS 810 ACRES. WE ARE EXCEEDING THE TARGET BY 238 ACRES.

"Regional trails and greenways

- A. Burlington Northern rails-to-trails (2 acres) - this corridor was originally envisioned to provide public access from Sauvie Island just north of the island bridge, over the Tualatin Mountains to the Tualatin Valley. At this time, a trail option [for Burlington

Northern] is not likely, since the railroad company has not abandoned the rail corridor as previously planned. [Bold added for emphasis.]"

THIS TRAIL WOULD HAVE RUN FROM WESTERN MULTNOMAH COUNTY (SAUVIE ISLAND) TO A POINT IN RURAL NORTHWESTERN WASHINGTON COUNTY NORTHWEST OF CORNELIUS PASS ROAD. ABOUT 80% OF THE TRAIL WOULD HAVE BEEN IN MULTNOMAH COUNTY. THE BALLOT MATERIALS FOR THE 95 BOND ISSUE MEASURED THE TRAIL TARGETS NOT IN ACREAGE BUT IN MILES. FOR THIS PARTICULAR TRAIL THE TARGET WAS 7 MILES.

"B. Fanno Creek Greenway (30 acres) - additions to the greenway from the Tualatin River to the Terwilliger Parkway in Portland will add a touch of green in a highly urbanized area as well as provide water quality protection."

THE 95 BOND MEASURE TARGET WAS FOR UP TO 12 MILES.

"C. Peninsula Crossing Trail (1 acre) - located in North Portland, this 3.5-mile trail connects the Smith and Bybee lakes area with the Willamette Greenway. The trail is now open for public use."

THE 95 BOND MEASURE TARGET WAS FOR 3 MILES.

"D. OMSI to Springwater Corridor (44 acres) - a portion of the Willamette Greenway, this east bank corridor will provide a critical link to the regional trail system and serve as a buffer to Oaks Bottom Wildlife Refuge."

THE 95 BOND MEASURE TARGET WAS 3 MILES.

"E. Clackamas River North Bank Greenway (608 acres) - a greenway from Barton Park to Clackamette Park will offer recreational opportunities and water quality benefits through a developing area."

THE 95 BOND MEASURE TARGET FOR CLACKAMAS WAS FOR UP TO 8 MILES.

Three smaller properties in Washington County are also signed up but not closed for the Fanno Greenway Trail. Some simple arithmetic deductions tell us that these Fanno properties total something less than 55 acres. In addition a 2 acre piece just inside Portland/Multnomah County was recently closed for the Fanno Trail. Portland and THPRD strongly supported this purchase.

THPRD recently completed a new segment of the Fanno Trail from roughly Allen/Scholls Blvd. to their Garden Home Recreation Center. The Center is just west of the County/Portland line on Garden Home Road.

A good number of the missing links for the Fanno Greenway Trail are east of the Garden Home Recreation Center, from the western edge of Portland east to the Willamette River. The Willamette will be the eastern terminus of the Fanno Trail. When completed it would be more accurate to call this trail the Willamette to Tualatin River Trail.

Since August 15th, Metro has brought 10 properties "under contract" -- those I mentioned above for Washington County and some others located elsewhere. These 10 properties total 568 acres of which 428 acres or 75% of the total are located in this County.

Question 2. Has Metro 95 Greenspaces Bond dollars been equitably distributed - has Washington County received its fair share?

The addition of Kistner Wetlands(Dairy/McKay Creek) and the other pending or closed purchases for Fanno Creek and Rock Creek Greenways make this a closer call than before. However, looking at the target acreage for the 1995 bond issue, and what Metro has accomplished since then (which is (outstanding), I still see a serious inequity.

Three of the short falls for the 1995 target areas (Gales Creek, Cooper Mountain and Rock Creek Greenway) are in Washington County; Multnomah and Clackamas County share one (Willamette River Greenway); and Clackamas County has one alone (Newell Creek Canyon).

"F. Beaver Creek Canyon Greenway (47 acres) - near Troutdale, this creek tributary of the Sandy River offers an important fish and wildlife corridor. A section of the trail project forms a portion of the 40-Mile Loop system."

THE 95 BOND MEASURE TARGET WAS FOR UP TO 4 MILES.

For the readers' convenience, let me repeat Question 1:

What openspace purchases has Metro currently made in Washington County under the 95 openspaces bond program?

The Second part of my Answer to the First Question:

Below you will see the latest Metro's Openspace Bond Program acquisitions since August 15, 2001. This information is partly based on recent conversations with Charlie Ciecko and Jim Desmond:

Metro has very recently acquired Kistner Wetlands. This is a 373-acre former dairy farm between Banks and Forest Grove. Mike Houck told me this property has outstanding and unique natural resources, as well as being an excellent bird watching site.

That purchase, along with two other purchases (Jensen and McCallum) totally 25 acres and located in Jackson Bottom, all recently closed. One other as yet undisclosed property is "signed up but not yet closed" somewhere in the Jackson Bottom/Dairy/McKay Creek target area.

The bottom line is that Metro will exceed its acreage goals for the Dairy/McKay Creek/Jackson Bottom area by more than 135 acres.

In addition Metro had now closed on the 9 acre Kim property. This property is located in a Hillsboro part of the Rock Creek acquisition area. This means Metro is still short 182 acres for the Rock Creek Greenway.

Moreover, two of the three short falls in this County are by a factor of well over a 1/3. Specifically: Cooper Mountain is 169 acres short of a 425 acre target; and Rock Creek is 182 acres short of a 300 acre target.

The prospects in Cooper Mt. and Rock Creek are particularly uncertain. And as for trails I think that this County deserves more than the 2/3rd piece of the Fanno Creek Trail, especially given the obvious no go status of the Burlington Northern Trail. That Trail would have tied northeast Washington County to west Multnomah County.

How is the above discussion relevant to whether Metro should acquire the TPL optioned lands? Because the TPL land is a sure way for Metro to meet its obligations to Washington County under the 1995 Bond program, given the uncertainties for further acquisitions at Rock Creek, Cooper Mountain and the Burlington Northern Trail.

Question 3. What openspaces should or can be acquired in Washington County?

I have heard no one disagree with the target areas set out in the 1995 Greenspaces Bond issue for Washington County. This is the so-called "A List" properties. I believe any A List properties located in this County should be purchased. However, it is highly unlikely that Metro can reach its openspaces goals/obligations in Washington County from the A List alone.

It is my best understanding, after speaking to Councilor Hosticka, Charlie Ciecko and Jim Desmond, on September 18th that roughly 12 million dollars is left from the 95 Openspaces Bond for further land purchases.

However, Councilor Hosticka also told me on the 19th that on-going negotiations for further acquisitions (that is, deals not yet signed and/or closed) could potentially commit another 6 million dollars, should all those negotiations lead to land purchases. In short 6 of the 12 uncommitted million openspaces bond dollars could become committed in the future, near or otherwise.

I know of one set of negotiations (recently featured in the Oregonian), that is a part of the 6 million dollars currently "in play." It is for Washington County property, known as the Senn Property. Senn is located along Ash Creek (a Fanno Creek tributary) in Tigard, and is part of the Fanno Creek Greenway target area. It is my understanding (again based on the above-referenced Oregonian feature), that Metro is willing to put \$600,000 towards an offered price of \$900,000 for Senn. I believe the balance may come from Clean Water Services, City of Tigard and individual donors. However more donors are needed to bridge a current \$70,000 shortfall to pay for the Senn Property.

However, unlike other target areas such as Fanno Creek Greenway, at both the Rock Creek and Cooper Mountain Metro faces a large property owner - an owner that will either enable Metro to meet its target or cause Metro to remain far short. So far as I know these owners remain unwilling to sell their properties to Metro, positions they have held for some years.

In short, it may be a long time before Metro finds the willing sellers it needs at Cooper Mountain, Rock Creek and Burlington Northern. Meanwhile, common sense and my own observations tell me that Metro will be under intense pressure to continue buying properties in all acquisition target areas including those over target.

There will always been some compelling in-holding property, some missing link, some choice property in these over-target areas, with passionate advocates pleading for additional Openspace Bond funds to purchase them. It will be hard for Metro to say no to those pleas. If there are not enough "noes" the Openspace Bond money will be gone before willing sellers (if any) are ever found at Cooper Mountain, Rock Creek, etc.

It is useful to see the language of the voter approved Openspaces Bond Measure to determine what courses of action are open to solve this problem. Metro adopted the Openspace Acquisition Bond Measure pursuant to Metro Resolution No. 95-2074-A (the "Resolution"). This Resolution adopted the language of the Bond Measure by reference to an attached Exhibit "B". (See the Resolution at the third resolve paragraph at page 3.)

The clear inference, based on the plain meaning of "retain" in Exhibit B (at page 6), is that if Metro has an obligation to "retain a regional balance of sites acquired" should new target areas be selected, then Metro also has a duty to regionally balance the sites it acquires in the first place, what I am calling A List properties.

Metro clearly intended to meet that initial obligation by purchasing openspaces from the Resolution's list of 14 regionally significant natural areas and in the amount set out in estimated acreages for each of those 14 areas. (See Resolution at the top of page 6.)

The Resolution allows Metro Council to acquire other "regionally significant" open spaces outside the 14 initial acquisition areas from the 1995 Openspaces Bond if certain circumstances arise. Among those circumstances are if Metro Council determines it is "infeasible" to acquire A List properties. (See the Resolution at the second from the bottom paragraph, at page 6.)

I am only aware of two possible courses of action available to Metro in order to meet its initial obligation to find a regional balance, given that only 6 million dollars remain truly uncommitted. Those courses of action are to either resolve not to spend any more openspaces money in over target areas until targets are met for all 14 acquisition areas, or find that it is unfeasible that all 14 targets and select new target areas.

The above two actions are not mutually exclusive. I believe Metro should do both. It should do the first because of the regional balance duties imposed on Metro by the Resolution. Metro Council should also add new acquisition areas because that it has become infeasible for Metro to meet its 1995 Bond obligations to the west-end of the Metro region from A List properties alone.

I have reached that conclusion given: the extremely strong pressures on Metro to purchase in over target areas, pressure that will grow not lessen over time; the clear intractability of key land owners at Cooper Mountain and Rock Creek and the operating realities along Burlington Northern; and the relatively small balance of remaining uncommitted openspaces funds.

I believe it follows that Metro will need to purchase openspaces in new target areas since not enough A List properties can be found to retain regional balance. For purposes of this memo, I will call properties in new target areas - B List properties.

I suggest that Metro select new acquisition target areas based on the language found in the Openspaces Bond Measure, i.e., whether they:

- Are located in infeasible first priority target areas;
- Are needed to gain or retain a regional balance of sites acquired; and
- Contain parcels that are identified as regionally significant in the 1992 Metropolitan Greenspaces Master Plan and more recently depicted as being "Most Significant Ecological Greenspaces" and "Fits [Metro Greenspaces] Criteria," on Metro's May 23rd, 2001 "Draft Regional Greenspaces System" map or its successor.

Bull Mountain is located in an area, eastern Washington County currently most short of openspaces per the 1995 Openspaces Bond. Specifically, this area contains two infeasible first priority acquisition target areas (Cooper Mountain and Rock Creek); and Metro needs to purchase more land in this area to gain regional openspace balance. (See the prior pages for the detailed discussion that lead me to those conclusions.)

Bull Mountain also contains parcels that are identified as regionally significant in the 1992 Metropolitan Greenspaces Master Plan, and contain properties that are depicted as "Most Significant Ecological Greenspaces" and "Fits [Metro Greenspaces] Criteria," on Metro's May 23rd, 2001 "Draft Regional Greenspaces System" map.

I further suggest that Metro select properties in new acquisition target areas based on whether they:

- Are identified as regionally significant in the 1992 Metropolitan Greenspaces Master Plan and more recently depicted as being "Most Significant Ecological

Greenspaces" and "Fits [Metro Greenspaces] Criteria," on Metro's May 23rd, 2001 "Draft Regional Greenspaces System" map or its successor.

- Are of sufficient size by themselves or when added to adjacent parks and/or greenspaces to maintain the on-going integrity of their natural resources;
- Are on or near regional trails not currently on the 1995 Bond list, but which trails now are being considered by Metro's Green Ribbon Committee as "potential sites" for additional Metro funding outside of the 95 Bond;
- Are located in areas identified on park and/or greenspaces Master Plans or other pertinent governmental planning documents;
- Enjoy strong public support for use as parks and/or greenspaces;
- Have willing sellers ready to sell to Metro;
- Have additional acquisition funding sources or which have sellers willing to sell to Metro on a discounted basis;
- Have partners willing to build necessary improvements and assume on-going maintenance and operational expenses.
- Are under a strong threat of development or other activity that would destroy the natural resources on that parcel;
- Are close to major population centers, and in particular rapidly growing ones;
- Are in areas presently under served with respect to parks and/or greenspaces;
- Are readily accessible; and
- Provide significant flood, storm water or other water quality functions;

TPL's two Bull Mountain properties (Cache Creek Addition - Stanley Trust and Conklin Property) meet nearly all of the above criteria.

Both properties are located within "Most Significant Ecological Greenspaces" and fit Metro "Greenspaces Criteria," as depicted on Metro's May 23rd, 2001 Draft Regional Greenspaces System map. These properties are also located within areas identified as regionally significant in the 1992 Greenspaces Master Plan. Moreover, Mike Houck believes TPL's Bull Mountain properties continue to have significant natural resources. He supports Metro's purchase of these properties.

Conklin and Stanley are of sufficient size by themselves or when added to adjacent parks and/or greenspaces to protect the on-going integrity of the natural resources.

Conklin is over 22 acres and is immediately adjacent to a new school site. Stanley is just less than 8 acres but is immediately adjacent to Tigard's Cache Creek Park, a green space park with excellent natural resources. Combining Stanley and Cache Creek Park would create a natural resource park of nearly 20 acres. Stanley and Cache Creek Park are both adjacent to a City-owned reservoir site. So there are potential green space opportunities on the reservoir property as well. (See the Technical Memorandum prepared by Mitchell Nelson, Re: Recreation Benefit Analysis - Stanley Trust, Conklin Property and Gage Grove, dated August 29, 2001, ("Technical Memorandum") at page 6.)

Adding the Stanley properties to Cache Creek Park is one of Tigard's priorities per its 1999 Park System Master Plan. The Conklin property is identified by that same 1999 Master Plan "as a potential community park site."

These properties also enjoy strong public support - from the residents in the area, many who have organized as the "Friends of Tigard Open Spaces," as well as from many elected leaders representing the area.

TPL's Stanley Trust, Conklin and a third the Gage Grove property are all available for Metro purchase. TPL is willing to sell the above three properties as a package on a large discounted basis.

Moreover, the three parcels are located in prime development areas, two (Stanley and Conklin) are on Bull Mountain, a extremely expensive residential area near Tigard and the other (Gage Grove) is located in the middle of Tigard. Tigard is growing rapidly. These properties will likely be developed not long after the TPL options expire. Both Conklin and Stanley are zoned "Medium Density Residential," and will accommodate a residential subdivision.

The City of Tigard's goal for Level of Service (LOS) is 11 acres per 1,000. "The City's current LOS is 9. Future population projections will only put increased pressure on existing park and recreation facilities." (See Technical Memorandum at page 2.)

The Stanley, Conklin and Gage properties are in areas presently "undeserved" with respect to parks and/or protected greenspaces. (See the Technical Memorandum at pages 5, 6 and 8.)

All of the TPL properties are readily accessible for public use. Indeed, among other access points, Conklin has an existing 25-foot easement connecting it to a major street, Beef Bend Road.

Finally, "a storm water containment area" is located along the northern edge of the Stanley Property. "This feature performs a necessary function as flood management for the residential areas.

Summary and Conclusion:

There is 6 million dollars of uncommitted 1995 Openspaces Bond money left. Metro can not for the foreseeable future find enough willing sellers at Cooper Mountain and Rock Creek to come any where close to meeting the acreage targets for those areas as stated in the Bond measure.

Metro has two courses of action to solve the above dilemma: Either resolve not to buy more acreage in over target areas until all under target areas are up to target; and/or add new target areas in areas not meeting the acreage goals.

Given the strong pressures to buy more land in target areas and the relatively small amount of uncommitted Bond funds now left, Metro's best course is to take both actions.

Bull Mountain meets the criteria set out in the Bond Measure for a new acquisition target area; and the two TPL optioned properties on Bull Mountain (Stanley and Conklin) meet nearly all relevant criteria for land purchase under Metro's Openspaces Bond Measure.

Metro should purchase Stanley and Conklin at fair market value, particularly if other discounted land can be included in that purchase.

I strongly recommend that we move quickly. We have a lot to do including: reconvening the Tigard group that met to discuss openspace purchases on Bull Mountain; meeting with other relevant parties such as TPL, and persuading Metro Council to freeze additional purchases in over target acquisition areas, open-up a new Bull Mountain target area, and open negotiations for possible purchase of TPL's Bull Mountain properties. So we have a lot to do, not much time and not much money left in the Openspaces Bond fund.

**MEMORANDUM
CITY OF TIGARD, OREGON**

TO: City Council
FROM: Bill Monahan
DATE: October 2, 2001
SUBJECT: COUNCIL CALENDAR, October - December 2001

Regularly scheduled Council meetings are marked with an asterisk (*). If generally OK, we can proceed and make specific adjustments in the Monthly Council Calendars.

October

* 9	Tues	Council Meeting - 6:30 p.m. Study Meeting - Business Meeting
15	Mon	Special Meeting with Tualatin City Council - 6-7:30 p.m. Held at Tualatin City Hall
* 16	Tues	Council Workshop Meeting - 6:30 p.m.
* 23	Tues	Council Meeting - 6:30 p.m. Study Meeting - Business Meeting

November

12	Mon	Veteran's Day – City Offices Closed
* 13	Tues	Council Meeting - 6:30 p.m. Study Meeting - Business Meeting
* 20	Tues	Council Workshop Meeting - 6:30 p.m.
22 & 23	Thurs/Fri	Thanksgiving Holiday – City Offices Closed
* 27	Tues	Council Meeting - 6:30 p.m. Study Meeting - Business Meeting

December

* 11	Tues	Council Meeting - 6:30 p.m. Study Meeting - Business Meeting
* 18	Tues	Council Workshop Meeting - 6:30 p.m.
25	Tues	Christmas Holiday – City Offices Closed

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10/15/01 - Special Meeting	10/16/01 - Workshop	10/23/01 - Business TV Margaret -Greeter
	Due: 10/2/01 @ Noon	Due: 10/9/01 @ Noon
	Workshop Topics	Study Session
	1. Senior Center Board - Jt Mtg - Loreen - 30 min	Exec Session - Solid Waste -Loreen - 10 min
	2. WA County Vision West Update -Liz - 30 min	
Mtg w Tualatin City Council in Tualatin	3. Model for New Library & Public Participation	
6 - 7:30 p.m., Tualatin City Hall	Plan from New Library Construction Comm	
	Margaret- 20 min	Consent Agenda
	4. Communication Plan Update - Liz - 30 min	Council Goal Update
	5. Renewal of Contribution of Franchise Fees for	City County Insurance Contractual Relationship -
	PEG Access - Liz- 10 min	RES - Loreen
	6. Internet Policy Discussion - Bill - 20 min	Property Acquisition Gaarde St Improvements -
		Gus/Vannie
		Business Meeting
		Approval Sorg Rhododendron Garden
		Designation - RES - John R - 10 min
	** Clear RRCCR Table for New Library Model **	Model for New Library & Public Participation
		Plan from New Library Construction Comm
		Margaret- 20 min
		Water Update - BLUE SHEET
		Solid Waste Rate Adjustment - PH - RES -
		Tom I - 45 min
		TMC Update - Public Assemblies (Balloon
		Festival)- ORD & RES - Ron - 10 min
		TMC Update - Truck/Trailer Parking Restrictions -
		ORD & RES - Ron - 10 min
		TMC Update - Burglary & Robbery Alarm
		Systems - ORD & RES - Ron - 10 min
		TMC Update - Residency Requirements - Liz -
		BLUE SHEET
		Law Enforcement Local Block Grant - PH -Ron -
		10 min
	l:/adm/greer/tentatv ag/tentative.xls	

11/13/01 - Business TV	-Greeter	11/20/01 - Workshop	11/27/01 - Business TV	-Greeter
Due: 10/30/01 @ Noon		Due: 11/6/01 @ Noon	Due: 11/13/01 @ Noon	
Study Session		Workshop Topics	Study Session	
		Sidewalk Maintenance - Howard - 30 min	TMC Update - LCRB - Tom & Terry - 20 min	
		Sponsorship Agreements for 4th of July, Balloon Festival, & Broadway Rose- Cathy - 20 min		
		TSP Adoption Work Session - Julia - 45 min		
		Tri-Met Action Update - Julia - 10 min		
Consent Agenda			Consent Agenda	
Business Meeting			Business Meeting	
TMC Update - Abandoned, Found, Seized & Stolen Property - Ron & Tim - BLUE SHEET			Financing Strategy w WA Square- Jt Mtg w Beaverton Council and County Board of Commissioners - Jim - BLUE SHEET	
TMC Update - Cable Communication - Liz & Craig - BLUE SHEET				
New Library Construction Comm Bond Measure - Margaret - BLUE SHEET				
Fanno Creek Ambassadors - Duane - 25 min				
OECDD Loan for Cook Park - PH - ORD - Craig - 10 min				
		I:/adm/greer/tentatv ag/tentative.xls		

AGENDA ITEM # _____
FOR AGENDA OF October 9, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE A resolution adjusting the fee for the cost of accounting and processing of checks returned by banking institutions to the City for non-payment.

PREPARED BY: Michelle Wareing DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should the Tigard City Council adjust the fee that is currently charged to customers whose checks are returned by banks for non-payment?

STAFF RECOMMENDATION

Staff recommends adjusting the current fee of \$10.00 per returned check to \$20.00 per returned check effective immediately.

INFORMATION SUMMARY

The City of Tigard receives check payments from customers on a daily basis. The majority of the payments are processed by the banks with no difficulties. However, some of the checks are returned by the banks due to non-payment. The City's bank charges a fee for each check that is returned. The City also incurs administrative costs for processing and collecting on returned checks.

It has been eighteen years since the returned check fee has been adjusted to cover current costs. Through a survey of surrounding cities, it was determined that fees range from \$10.00 to \$25.00 per returned check. Tigard Municipal Codes, Section 3.32 requires that fees and charges be reasonable, recover costs associated with providing a service, and be approved by resolution. Staff has concluded that a fee of \$20.00 per returned check would provide cost recovery for City staff time and bank fees.

OTHER ALTERNATIVES CONSIDERED

No fee adjustment

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Does not apply

ATTACHMENT LIST

Resolution adjusting the returned check fee.

FISCAL NOTES

Estimated revenue increase of approximately \$900 to \$1,000 per year.

CITY OF TIGARD, OREGON

RESOLUTION NO. 01-_____

A RESOLUTION ADJUSTING THE FEE FOR THE COST OF ACCOUNTING AND PROCESSING
OF CHECKS RETURNED BY BANKING INSTITUTIONS TO THE CITY FOR NON-PAYMENT

WHEREAS, the City of Tigard is being charged a fee by the banks for returned checks, and

WHEREAS, the City incurs an administrative cost for processing and collecting on returned checks, and

WHEREAS, the Tigard Municipal Code, Section 3.32 requires that fees and charges be reasonable, recover costs associated with providing the service, and be approved by resolution.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The fee for returned checks be adjusted to \$20.00 per returned check.

SECTION 2:

EFFECTIVE DATE: October 10, 2001

PASSED: This _____ day of _____ 2001.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

RESOLUTION NO. 01-____

AGENDA ITEM # _____
FOR AGENDA OF October 9, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE A Resolution approving budget amendment #5 to the FY 2001-02 Budget to transfer funds to pay an assessment by the League of Oregon Cities for legal costs associated with Qwest franchise fees.

PREPARED BY: Craig Prosser DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should the City of Tigard contribute \$12,607 towards legal costs incurred by the League of Oregon Cities in its efforts to defend cities' right-of-way management and franchise rights challenged by Qwest Communications Corp. in the case of Qwest vs. the City of Portland?

STAFF RECOMMENDATION

Approve Budget Amendment #5.

INFORMATION SUMMARY

This summer, Qwest Communications Corp. filed suit against the City of Portland claiming that Portland's franchise fees violate provisions of the Telecommunications Act of 1996. Qwest also sent letters to 30 cities in Oregon, including the City of Tigard, informing those cities that Qwest will no longer pay local franchise fees, pending a resolution of Qwest vs. the City of Portland. In August, Verizon sent the City of Tigard a letter informing the City that it was paying its scheduled franchise fees under protest and that it would request a refund should Qwest prove successful in its suit.

The City of Tigard budgeted to receive \$420,240 in franchise fees from Qwest, Verizon, and all other telecommunications providers. Telecommunications companies represent the second largest source of franchise fee revenues to the City of Tigard. (Electricity fees are the largest source.) The City anticipates a total of \$2.3 million in franchise fees from all utilities in FY 2001-02.

If Qwest is successful in its suit against Portland, this could result in a drastic limiting (if not total elimination) of franchise fees paid by all telecommunications companies to cities.

City Attorneys from cities across the state have been working with the League of Oregon Cities (LOC) on this issue. Together, they have determined that six additional cities should intervene in Qwest vs. the City of Portland. The six intervening cities are Happy Valley, Keizer, North Plains, Pendleton, Redmond, and Salem.

LOC has retained legal counsel to represent the intervening cities and the interests of all cities in Oregon. LOC is requesting a voluntary payment from all cities equal to 3% of their anticipated revenue from

telecommunication franchises. For the City of Tigard, this contribution would be \$12,607. This payment was not anticipated in the FY 2001-02 budget.

This is a crucial issue for Tigard and all cities in Oregon. The city attorneys working with LOC feel that Qwest's case is resting on a faulty interpretation of the Telecommunications Act of 1996 and a faulty interpretation of a case in the State of Washington (Auburn vs. Qwest).

This resolution amends the FY 2001-02 City of Tigard Budget to transfer \$12,607 from the General Fund Contingency to the Policy and Administration Program to allow payment of Tigard's assessment.

OTHER ALTERNATIVES CONSIDERED

Do not authorize this payment. The lawsuit and LOC's defense of the rights of cities will proceed, but other cities in Oregon would have to pick up Tigard's share of these legal costs.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

Resolution

FISCAL NOTES

This resolution transfers \$12,607 from the General Fund Contingency.

CITY OF TIGARD, OREGON

RESOLUTION NO. 01-

A RESOLUTION APPROVING BUDGET AMENDMENT #5 TO THE FY 2001-02 BUDGET TO TRANSFER FUNDS TO PAY AN ASSESSMENT BY THE LEAGUE OF OREGON CITIES FOR LEGAL COSTS ASSOCIATED WITH QWEST FRANCHISE FEES

WHEREAS, Qwest Communications Corp. has filed suit against the City of Portland challenging Oregon cities' legal authority to levy and collect telecommunications franchise fees, and

WHEREAS, Qwest has sent letters to 30 Oregon cities, including the City of Tigard, informing them that Qwest will no longer pay franchise fees due under existing franchise agreements pending resolution of Qwest vs. the City of Portland, and

WHEREAS, the City of Tigard has budgeted to receive \$420,240 in telecommunications franchise fees in FY 2001-02, which could be at risk if Qwest is successful in its suit, and

WHEREAS, the League of Oregon Cities (LOC) is coordinating the legal response for all Oregon cities, and

WHEREAS, LOC is requesting a voluntary payment from each city equal to 3% of its FY 2001-02 budgeted telecommunications franchise revenues to pay for legal costs associated with this suit, and

WHEREAS, it is appropriate that the City of Tigard contribute to legal costs to help defend cities' right to manage its public rights-of-way, and

WHEREAS, it is necessary to amend the FY 2001-02 Adopted Budget to transfer funds from the General Fund contingency to allow the City to contribute its fair share to the LOC legal effort.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The FY 2001-02 Adopted Budget of the City of Tigard is hereby amended as shown in Attachment A to this resolution.

PASSED: This ____ day of ____ 2001.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

Attachment A
FY 2001-02
Budget Amendment # 5

FY 2001-02 Budget	Budget Amendment # 5	FY 2001-02 Revised Budget
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General Fund

Resources			
Total	\$22,922,016	\$0	\$22,922,016
Requirements			
Community Service Program	9,065,313		9,065,313
Public Works Program	2,374,907		2,374,907
Development Services Program	2,532,431		2,532,431
Policy & Administration Program	385,738	12,607	398,345
General Government	0		0
Program Expenditures Total	\$14,358,389	\$12,607	\$14,370,996
Debt Service	\$0		\$0
Capital Improvements	\$410,000		\$410,000
Transfers to Other Funds	\$3,661,011		\$3,661,011
Contingency	\$1,000,000	(\$12,607)	\$987,393
Total Requirements	\$19,429,400	\$0	\$19,429,400
Ending Fund Balance	3,492,616		3,492,616
Grand Total	\$22,922,016	\$0	\$22,922,016

AGENDA ITEM # _____
FOR AGENDA OF October 9, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE A Resolution approving Budget Amendment #6 to the FY 2001-02 Budget to transfer funds from contingency to make a contribution to Community Partners for Affordable Housing for the Village at Washington Square project.

PREPARED BY: Craig Prosser DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should the City of Tigard contribute \$8,000 to Community Partners for Affordable Housing to offset increased parks SDC fees for the Village at Washington Square project?

STAFF RECOMMENDATION

Approve Budget Amendment #6.

INFORMATION SUMMARY

Community Partners for Affordable Housing (CPAH) owns and operates low income housing within the City of Tigard. CPAH is in the process of building an additional affordable housing project, to be known as the Village at Washington Square. That project has been charged and has paid for various building and development fees, including Systems Development Charges (SDC).

On April 10, 2001, the City of Tigard increased the Parks SDC. The increased parks SDC fee cost CPAH an additional \$8,000. CPAH had not anticipated this increased fee in the Village at Washington Square pro forma. This increase, therefore, created difficulties for the project.

The City of Tigard Vision Statement and Council Goals include encouragement of affordable housing within the City. The efforts of CPAH and other affordable housing organizations help the City to achieve these goals.

OTHER ALTERNATIVES CONSIDERED

Do not offset fees.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Growth & Growth Management, Goal #3 – Partnerships for advocacy and preservation of affordable housing are encouraged and supported by the City and the community.

ATTACHMENT LIST

Resolution

FISCAL NOTES

The Resolution transfers \$8,000 from General Fund contingency to make this payment.

CITY OF TIGARD, OREGON

RESOLUTION NO. 01-

A RESOLUTION APPROVING BUDGET AMENDMENT #6 TO THE FY 2001-02 BUDGET TO TRANSFER FUNDS FROM CONTINGENCY TO MAKE A CONTRIBUTION TO COMMUNITY PARTNERS FOR AFFORDABLE HOUSING FOR THE VILLAGE AT WASHINGTON SQUARE PROJECT.

WHEREAS, Community Partners for Affordable Housing (CPAH) owns and operates low income housing within the City of Tigard, and

WHEREAS, CPAH is in the process of building an affordable housing project, to be known as the Village at Washington Square, and

WHEREAS, CPAH has paid for various building and development fees in conjunction with this project, and

WHEREAS, on April 10, 2001, the City of Tigard raised its Parks Systems Development Charge (SDC), which cost the Village at Washington Square project an additional \$8,000, and

WHEREAS, CPAH had not anticipated this increased fee, and

WHEREAS, the City of Tigard Vision Statement and 2001 Council Goals include the encouragement of affordable housing projects within the City of Tigard, and

WHEREAS, the City Council has determined that it is appropriate for the City to reimburse CPAH for the increased Parks SDC fees paid.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The FY 2001-02 Adopted Budget of the City of Tigard is hereby amended as shown in Attachment A to this resolution.

PASSED: This _____ day of _____ 2001.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

RESOLUTION NO. 01-__

Attachment A
FY 2001-02
Budget Amendment # 6

FY 2001-02 Budget	Budget Amendment # 6	FY 2001-02 Revised Budget
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General Fund

Resources			
Total	\$22,922,016	\$0	\$22,922,016
Requirements			
Community Service Program	9,065,313	8,000	9,073,313
Public Works Program	2,374,907		2,374,907
Development Services Program	2,532,431		2,532,431
Policy & Administration Program	398,345		398,345
General Government	0		0
Program Expenditures Total	\$14,370,996	\$8,000	\$14,378,996
Debt Service	\$0		\$0
Capital Improvements	\$410,000		\$410,000
Transfers to Other Funds	\$3,661,011		\$3,661,011
Contingency	\$987,393	(\$8,000)	\$979,393
Total Requirements	\$19,429,400	\$0	\$19,429,400
Ending Fund Balance	3,492,616		3,492,616
Grand Total	\$22,922,016	\$0	\$22,922,016

AGENDA ITEM # _____
FOR AGENDA OF October 9, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Approve Resolution Revising the Procedure to Grant City Sponsorship to Community Events and Replacing Resolution No. 00-01

PREPARED BY: Cathy Wheatley DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should the Council approve a resolution that revises the procedure to grant City sponsorship to community events and replaces Resolution No. 00-01.

STAFF RECOMMENDATION

Adopt the proposed resolution.

INFORMATION SUMMARY

On May 8, 2001, the City Council reviewed a draft resolution to revise the procedure to grant City sponsorship to community events. This resolution would replace Resolution No. 00-01. Council did not indicate concerns or issues with the resolution that defined the procedure for sponsored community events. However, Council directed staff to tailor the agreements to each of the events' needs and concerns. Therefore, the item before City Council at this time is only for the approval of the revised procedure to grant City sponsorship to community events. City Recorder Cathy Wheatley is working with each of the three event organizers to draft agreements (based on a standardized agreement). These three draft agreements will be presented to the City Council for review and discussion at its November 20, 2001, workshop meeting. For additional detail, please see the attached memorandum from Ms. Wheatley.

OTHER ALTERNATIVES CONSIDERED

Modify the proposed resolution or agreement form.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Community Character & Quality of Life Target Area -- Goal for Community Events, which states that an overall approach is developed "...for sponsoring community events..."

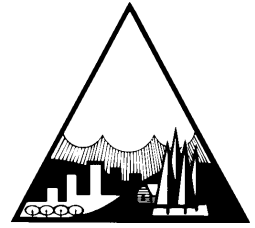
ATTACHMENT LIST

1. Memorandum from City Recorder Cathy Wheatley dated September 25, 2001
2. Proposed Resolution with Attachments A (City Sponsorship of Cultural Events) and Attachment B (Sponsorship Agreement)
3. Resolution No. 00-01

FISCAL NOTES

N/A

MEMORANDUM



TO: Honorable Mayor & City Council

FROM: Cathy Wheatley, City Recorder

RE: City Sponsorship - Community Events

DATE: September 25, 2001

Attached is a proposed resolution to update the procedure to grant City sponsorship to Community Events and replacing Resolution No. 00-01.

Individual sponsorship agreements will be reviewed with the event organizers for the 4th of July, Balloon Festival and Broadway Rose Theatre Company and submitted to the City Council for final approval prior to the release of funds for this upcoming fiscal year.

The 4th of July, Inc. has submitted proposed changes to the "boilerplate" language to the agreement and enacting resolution. A similar review will be done for the Broadway Rose and the Balloon Festival Agreements. Draft agreements for the three currently designated sponsored events will be scheduled for Council review, discussion and approval at the City Council workshop meeting of November 20, 2001.

CITY OF TIGARD, OREGON
RESOLUTION NO. 01-_____

A RESOLUTION REVISING THE PROCEDURE TO GRANT CITY SPONSORSHIP TO
COMMUNITY EVENTS AND REPLACING RESOLUTION NO. 00-01.

WHEREAS, various groups organize and put on community and cultural events for the benefit of the citizens of Tigard; and

WHEREAS, the City of Tigard from time to time offers support for some privately organized and operated events in the form of cash payments, in-kind services, fee waivers, and/or access to City facilities or insurance; and

WHEREAS, it would be appropriate for the City to support certain privately organized and operated events as a sponsor due to the number of Tigard citizens participating or volunteering for the event, the role of the event in creating a greater sense of community in Tigard, and the economic, artistic, and cultural benefits of the event to Tigard residents and businesses; and

WHEREAS, City sponsorship, with a commitment for long term participation, improves the ability of event organizers to plan for the long term and to obtain other sponsors and financial support; and

WHEREAS, the City did establish three sponsored community events in 2000 by way of Resolution No. 00-20 for the Tigard Festival of Balloons, Resolution No.00-21 for the Tigard 4th of July Event, and Resolution No. 00-22 for the Broadway Rose Theatre Company.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

Section 1: The procedure for City Sponsorship of Cultural Events, included in this Resolution as Attachment A, is hereby adopted. The procedure adopted by Resolution No. 00-01 shall no longer be in effect.

Section 2: The standardized agreement form, included in this resolution as Attachment B, is hereby adopted as the agreement form that the City shall use for agreements with organizers of sponsored events. The standard form may be modified on a case-by-case basis to fit the particular circumstances of a sponsored event.

PASSED: This _____ day of _____, 2001.

Mayor, City of Tigard

ATTEST:

City Recorder - City of Tigard

I:\ADM\CATHY\EVENTS\SPONSOR\RESOLUTIN - SPONSOR.DOC

ATTACHMENT A
CITY SPONSORSHIP OF CULTURAL EVENTS

1. The City of Tigard will formally recognize by Council resolution those community and cultural events that it wishes to sponsor. Sponsorship will continue until terminated under the terms of the sponsorship agreement. All sponsored events shall remain the responsibility of the event organizer and are not official City events.
2. City sponsorship may include City support (cash payments, in-kind services, fee waivers, and/or access to City facilities or insurance), as identified in the sponsoring resolution. If City sponsorship includes cash payments, the sponsoring resolution will identify a target funding amount. A target amount may be adjusted, however, during the City's annual budget process. City sponsorship may include coverage by the City's insurance policies only with the written approval of the City's Finance Director and Risk Manager.
3. In identifying events for City sponsorship, the City will consider the following factors:
 - a. The number of City residents participating in the event.
 - b. The number of City residents volunteering for the event.
 - c. The role of the event in creating a greater sense of community and Tigard identity.
 - d. Economic, artistic, and cultural benefits of the event to Tigard residents and businesses.
 - e. The level of support for the event raised from other sources.
 - f. The event is held within the corporate limits of the City of Tigard.
4. The City may require events sponsored by the City to list the City as a sponsor in publicity and promotional materials that list sponsors. The City may require the event to include the City's logo on any materials or displays that display other sponsors' logos.
5. Non-sponsored events may be considered for funding during the City's annual budget process on a year-to-year basis.
6. The organizer of a sponsored event shall be required to enter into a sponsorship agreement with the City.
7. The sponsored event and the organizer of the sponsored event are independent of City control and have no authority to act for the City. The sponsored event and organization are not agents, employees or officers of the City for any purpose.
8. The City may review sponsored events and the actions of the organizers of sponsored events at any time to determine continued compliance with agreements, sponsoring resolutions, and applicable code provisions and may take appropriate action, including termination, for noncompliance.

ATTACHMENT B
SPONSORSHIP AGREEMENT

This sponsorship agreement is between the City of Tigard, an Oregon municipal corporation (City) and _____, a _____ (Organizer).

RECITALS

- a. Organizer is the organizer of the _____ (the Event) and has asked the City to be a sponsor of the Event. Although open to the public, the Event put on by Organizer is a private event and not an official City event.
- a. City has passed a resolution which provides procedures and policies for City sponsorship of events.
- b. City has passed a resolution which authorized City sponsorship of the Event, subject to execution of this Sponsorship Agreement.
- c. City and Organizer have agreed to the scope of the City sponsorship and the relationship between the City and Organizer as set forth below.

AGREEMENT

- 1. (OPTIONAL - to be used if the City requires Organizer to provide insurance. Not applicable if City provides insurance.) This agreement shall be effective when Organizer provides certificates of insurance as required by Section ____ below.
- 2. This agreement shall remain in effect until terminated as provided in Section ____ below.
- 3. City shall reimburse (pay) Organizer up to _____ for fiscal year _____, for costs incurred to put on the Event, as provided for in Resolution _____. Payment shall be made only after Organizer provides proof that the costs have been incurred and paid by the Organizer and were costs of the Event. (Payment shall be made no more than 60 days prior to the Event to pay costs of the Event.) The amount of funds, if any, that the City will provide for future fiscal years shall be determined by the Tigard City Council in its sole discretion.

4. A. (OPTIONAL) City shall make the following City facilities available for use by Organizer:

The dates and times of use of the City facilities shall be specified in a permit that must be applied for at least ____ days before the Event. All fees for the permit may be waived.

- B. (OPTIONAL - PROBABLY FOR BALLOON FESTIVAL ONLY) Organizer shall have the right to use the following areas of Cook Park for the duration of the Event:

_____ (attach map)

During the period that Organizer has the right to use these areas, Organizer may determine who may engage in commercial activities within these areas. For all other areas Organizer shall have no right to exclude persons or prevent them from engaging in commercial activity.

To provide security for equipment, goods and other property of Organizer during the Event, camping within the exclusive area is permitted to Organizer and those permitted to camp by Organizer. This section constitutes the camping permit authorized by TMC Section 7.80.020.

5. (OPTIONAL) City shall provide the following in-kind services to the Organizer:

(FOR BALLOON FESTIVAL) City shall police Cook Park during the Event. Organizer shall have no right to control or direct City police operations and City employees. Nothing in this section relieves Organizer from responsibility for damage to City property or other property resulting from the Event.

City shall provide litter clean up for the Event within Cook Park. Organizer shall have no right to control or direct City employees. Nothing in this section relieves Organizer from responsibility for damage to City property or other property resulting from the Event.

6. (REIMBURSEMENT ALTERNATIVE) If the Event does not take place because of weather or other reason outside the control of the Organizer, the City may reimburse Organizer for expenses incurred by Organizer prior to the cancellation up to the amount stated in Section 2. If the Event is canceled by Organizer for reasons within Organizer's control, the City shall not pay any funds to Organizer and Organizer shall return to the City all funds paid by the City to Organizer in connection with the canceled Event within ten (10) business days of the cancellation.

(PAYMENT ALTERNATIVE) If the Event does not take place because of weather or other reason outside the control of the Organizer, Organizer shall repay the City the amount paid pursuant to Section 2, provided however, that Organizer shall not be required to refund any amount actually expended for the Event before cancellation. In determining whether proceeds from the City have been expended, Organizer shall balance expenditures for the Event against revenue related to the Event, and all excess income up to the amount stated in Section 2 shall be used to repay the City.

If the Event is canceled for any reason, the City shall not provide any in-kind services after the date of cancellation. If the Event is canceled for any reason, the City's facilities shall be available to the Organizer on the same basis that they are available to any other person or entity.

If the main location of the Event moves outside the City limits of the City of Tigard for a given year, the City may terminate or reduce payments and/or the provision of services as it determines appropriate. The termination or reduction shall be decided by the City Council in its sole discretion.

7. Organizer shall identify City as a sponsor of the Event and Organizer shall provide the following rights to City:

(Include as appropriate)

- A. The right to have a booth at the Event.
- B. The right to have banners at the following locations: _____, (*list*) such banners to be provided by Organizer and to be of a size and design chosen by City and placed in accordance with City's directions.
- C. The right to have _____ (*number*) additional signs at locations specified by City and at a distance of at least _____ (*number*) feet from other signage, such signs to be provided by Organizer.
- D. The right to signage on all courtesy vehicles, if any, used by Organizer in connection with the Event.

- E. The right to credit as follows in all print advertising of a size larger than _____ (*number*) square inches placed by Organizer in connection with the Event: inclusion of City as listed sponsor.
- F. The right to be named in all press releases issued by Organizer.
- A. The right to be listed in any list of sponsors or to be included in any acknowledgment of sponsors.
- H. The right to _____ (*number*) pages of advertising in the official program produced by Organizer.
- I. The right to have the City logo displayed on an equal basis with other sponsors.
- J. The right to use photographs and film of this Event generated by the City, its employees, agents or volunteers.
- K. The right to erect a courtesy tent or host a similar area at the Event at a location designated by Organizer.
- L. The right to make public address announcements during the Event.

Nothing in the identification of the City as a sponsor shall state or imply that the Organizer is an agent of the City or that the City is responsible in any way for the Event.

- 8. Organizer shall provide sufficient means by which the public may obtain information about the Event, including but not limited to adequate phone lines to handle inquiries about the Event. The information phone lines shall be answered by a person or by a message that includes Event location, schedule and pricing information. Organizer shall provide City a written public information and communication plan at least 90 days before the Event. The City may require revisions to the plan. If Organizer fails to provide a plan or to comply with the plan, the City may terminate this Agreement, suspend or reduce payments, or deny Organizer the use of City facilities or services. City's only obligation to provide information about the Event shall be to provide the Event's information telephone number and/or web site address.
- 9. Food and Beverage Service.
 - A. Warranty. Organizer represents and warrants that it will cause all food and beverage vendors to represent and warrant, as a condition of their participation in the Event, that they will comply with all food service, sanitation and other regulations applicable to their services at the Event.

- B. Alcohol. If alcohol is served at the Event, Organizer will use its best efforts, and will cause its vendors to use their best efforts, to comply with all applicable laws and regulations, including City regulations, regarding the service of alcohol to intoxicated or underage persons, and to encourage the safe use of alcohol.
 - C. Proof of Liquor Liability Coverage. If alcohol is served at the event, Contractor shall provide proof of Liquor Liability coverage required by Sections 13 and 15 of this Agreement.
 - D. Music. Organizer represents and warrants that all music played at the Event, whether live, recorded or publicly broadcast, will be duly licensed for public performance by ASCAP, BMI, SESAC or such other performing rights societies or copyright owners as may be required by law, or else in the public domain. Organizer will indemnify and hold City harmless from and against any liability arising out of the performance of music at the Event.
10. The City and Organizer enter into this agreement at arms-length and their only relationship is contractual. Neither party is an employee, agent, partner, or co-venturer in relationship to the other. Organizer is and remains an independent entity and has no authority whatsoever to act for the City. Organizer is not an officer, employee or agent of City as those terms are used in ORS 30.265 Organizer's officers, employees and agents are not the officers, employees, or agents of City those terms are used in ORS 30.265. Organizer, its employees and officers shall not hold themselves out either explicitly or implicitly as officers, employees or agents of City for any purpose whatsoever, nor are they authorized to do so. Organizer shall include a provision that it is not an agent of the City in all contracts it enters into with third parties.
11. Organizer is solely responsible for the organization and operation of the Event and accepts responsibility and liability for all personal injury, property damage, and other damages arising from or related to the Event. The City has no responsibility for the organization or operation of the Event. To the fullest extent permitted by law, Organizer agrees to fully indemnify, hold harmless and defend the City, its elected and appointed

officials, employees and volunteers from and against all claims, damages, losses and expenses incidental to the investigation and defense thereof, based upon or arising out of or incidental to damages or injuries to persons or property, in any way related to the Event, or any activity associated with the Event, except for claims, damages, losses and expenses that are solely attributable to the actions of the City. Organizer's agreement to indemnify, hold harmless and defend the City extends to all claims damages, losses and expenses caused by or alleged to be caused by the fault or negligence in whole or in part of Organizer's agents, contractors, sub-contractors, employees or any third-parties that are in any way related to the Event. This provision is essential to the City's agreement to sponsor the Event and may not be severed from this agreement. [OPTIONAL -- This indemnity extends to but is not limited to all claims, damages, losses and expenses relating to operation of hot-air balloons, the operation of any carnival rides or games, and the sale or consumption of food or drink in connection with the Event.] [OPTIONAL X This indemnity extends to but is not limited to all claims, damages, losses and expenses relating in any way to fireworks, including injuries or damage resulting from explosion, fire, noise, shock or other direct or indirect effects of fireworks whether or not the damage or injury occurred from a planned or unplanned use or explosion.] [OPTIONAL - FOR CITY INSURED EVENTS X Nothing in this paragraph shall be interpreted or applied to reduce or limit in any way the insurance coverage provided by the City under Section 14.

12. Organizer shall include in all Event-related contracts with third parties a provision requiring the third party to defend, hold harmless, and indemnify the City as to any claim arising from the actions or negligence of the third party and shall include in those contracts a provision requiring the third parties to maintain adequate liability insurance naming the City as an additional insured. Organizer shall require written contracts of all third parties that provide food or beverage service, rides, fireworks displays, or that operate balloons and shall require that the insurance match that required of Organizer and be appropriate to the type of service or goods provided. Organizer shall require any third party serving alcohol at the event to obtain Liquor Liability coverage. Limits for Liquor Liability coverage must match the limits required of Organizer for Commercial General Liability coverage. The Liquor Liability endorsement must be attached to the certificate of insurance provided to the City. Organizer shall provide City with the name, address and phone number of all third parties with which it contracts, a general description of the work the contractor will perform, a copy of each contract, and a certificate of insurance. Organizer shall also provide City with the name, address and phone number of all other sponsors of the Event.
13. (If applicable). Organizer has chosen to use City property and facilities for the Event based on Organizer's inspection of the property and facilities and determination that the property and facilities are appropriate for the Event. Organizer accepts that the City is not responsible for any defects, imperfections, or lack of suitability of the City property and facilities.

14. During the term of this sponsorship agreement, Organizer shall purchase and maintain insurance of the types and in the amounts specified in this section. Organizer shall furnish acceptable certificates of insurance to City at least 60 days before commencement of the Event, or within ten (10) days after execution of this agreement if this agreement is executed less than 70 days before the Event. Certificates of insurance must be provided to the City prior to any payment or furnishing of facilities or services by City. Organizer shall indemnify City for any liability or damages that City may incur due to Organizer's failure to purchase or maintain any required insurance. Organizer shall be responsible for the payment of all premiums and deductibles. Organizer shall maintain insurance of the types and in the amounts described below.

A. **General Liability Insurance** (Not applicable to Events for which City provides insurance)

Organizer shall obtain, at Organizer's expense, and keep in effect during the term of this agreement, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an Aoccurrence≡ form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this agreement. The following limits of insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$1,000,000
Products - Completed Operations Aggregate	2,000,000
Personal and Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one Fire)	50,000
Medical Expense (Any one Person)	5,000
Employers Liability	500,000

B. **Liquor Liability Coverage**

If alcohol is to be served at the event, Liquor Liability coverage will be endorsed to the Commercial General Liability coverage. Limits for Liquor Liability coverage will match the limits provided for the Commercial General Liability coverage. The endorsement must be attached to the certificate of insurance provided to the City.

C. Commercial Automobile Insurance

Organizer shall also obtain, at Organizer's expense, and keep in effect during the term of this agreement, A Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000. This requirement applies if the Organizer provides transportation to or from the event for participants.

D. Workers Compensation Insurance

Organizer shall provide coverage for all employees coming under the scope of State Workers Compensation laws. This shall include Employers Liability Insurance with coverage of not less than \$500,000 per accident.

E. Additional Insured Requirement

The City of Tigard, its officers, directors, employees, and volunteers shall be added as additional insured with respect to the Event. All Commercial General Liability insurance policies will be endorsed to show this additional coverage.

F. Insurance Carrier Acceptability

An insurance company acceptable to the City of Tigard must underwrite coverages provided by the Organizer.

G. Evidence of Insurance

As evidence of the insurance coverage required by this agreement, the Organizer shall provide a certificate of insurance to the City. No use of City facilities, payment or other benefit will be provided by the City to the Organizer until the required certificates have been received and approved by the City. The certificate will specify and document all provisions required by this agreement. A renewal certificate will be sent to the City 10 days prior to coverage expiration.

H. Cancellation Provisions

Coverage may not be canceled or materially changed without 30 days' written notice to the City. The notice of cancellation provision shall be physically endorsed on the Commercial General Liability policy.

Failure of City to demand such certificate or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Organizer's obligation to maintain such insurance.

(FOR 4TH OF JULY FIREWORKS ONLY) The City agrees to include the Event as an insured activity under its existing liability insurance policies.

The insurance required under this Paragraph shall require the insurer to give City not less than thirty (30) days' notice prior to termination or cancellation of coverage.

Organizer shall require all entities it contracts with to provide service at the Event to provide insurance with the same limits required of Organizer.

15. Organizer shall adhere to all applicable federal, state, and local laws, regulations, executive orders and ordinances and obtain all required permits. Required permits may include but are not limited to:

Park Reservation Permit
Parade Permit
Noise Limit Permits
Liquor Licenses
Food Handler Permits
Public Assembly Permits

Fees for permits for the Event may be waived.

16. Notices. All notices required or permitted to be made under this Agreement shall be in writing and shall be deemed to have been duly given when delivered or sent by prepaid certified or registered mail or fax:

If to Organizer, to: _____
(Address) (Fax)

If to City, to: _____
(Address) (Fax)

or such other address as either party may designate in writing to the other party for this purpose.

17. Other Warranties. Organizer represents and warrants that:
- A. Organizer has the full right and legal authority to enter into and fully perform this Agreement in accordance with its terms without violating the rights of any other person;
 - B. Organizer's trademarks do not infringe the trademarks or trade names or other rights of any other person;
 - C. Organizer has all government licenses, permits or other authorizations necessary

to conduct the Event as contemplated under this Agreement; and

- D. Organizer will comply with all applicable laws, regulations and ordinances pertaining to the promotion and conduct of the Event.
- B. Organizer will ensure that all persons and entities it contracts with to provide services or goods at the Event shall have the knowledge, experience and capacity to provide the goods and services.

18. Records and Reporting

- A. Organizer shall maintain a complete set of records relating to the Event, in accordance with generally accepted accounting procedures. The records must be maintained for at least three years from the date they are generated. Organizer shall permit the authorized representatives of the City to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of Organizer relating to the Event while this Agreement is in effect and for three years after termination of this Agreement. The obligations imposed by this section shall survive termination of this Agreement.
- B. Organizer shall request funding on an annual basis for future years within the City's established budget cycle. The request for funding shall include:
 - i. Financial statements from the previous year's Event.
 - ii. The budget for the Event to the year for which funding is requested.
 - iii. An Event schedule.
 - iv. A list of events associated with the Event.
 - v. The amount of funds requested and the purpose for which the funds will be used.
 - vi. A list of all other services, facilities, or other benefits, that Organizer is requesting from City.
- C. Failure to comply with subsections A or B of this section shall constitute cause for termination of this Agreement by the City.

19. Governing Law and Consent to Jurisdiction. This Agreement is subject to and shall be construed in accordance with the laws of the State of Oregon, except for choice of law provisions. City and Organizer both consent to jurisdiction in the state and federal courts located in Oregon. Organizer shall comply with the clauses required in every public contract entered into in the State of Oregon as set forth in ORS 279.312, 279.314, 279.316 and 279.320, which are hereby incorporated by reference.

20. Non-Assignment. Neither party shall assign this Agreement without the prior written approval of the other party, except that City may assign this Agreement to any successor entity.

21. Complete Agreement. This Agreement represents the entire agreement between the parties and supersedes all other agreements, if any, express or implied, whether written or oral. Organizer has made and makes no representations of any kind except those specifically set forth herein.
22. Binding Agreement. This Agreement shall be binding upon the parties, their successors and assigns.
23. This agreement may be terminated by mutual agreement of the parties. Either party may terminate this agreement for no reason by providing notice of termination one year prior to termination. Either party may terminate this agreement for default by providing 30 days' notice. If the other party may cure the default and does so within 30 days, the agreement shall not terminate. City may terminate this agreement without notice by vote of the City Council if the City Council determines that it is in the public interest to do so. Any breach of this agreement shall be considered a default. The indemnification provisions shall survive termination.
24. Except for those responsibilities expressly reserved to the City Council, all rights and duties of the City may be exercised by the City Manager or designee.

ORGANIZER

[Name]

[Signature]

[Date]

SPONSOR

City of Tigard

[Signature]

[Date]

I:\ADM\CATHY\EVENTS\SPONSOR\RESOLUTION - ATTACHMENT B.DOC

CITY OF TIGARD, OREGON

RESOLUTION NO. 00-01

A RESOLUTION ESTABLISHING A PROCEDURE TO GRANT CITY SPONSORSHIP TO
COMMUNITY EVENTS.

WHEREAS, various groups organize and put on community and cultural events for the benefit of the citizens of Tigard, and

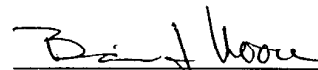
WHEREAS, the City of Tigard from time to time offers support for some events in the form of direct cash grants, in-kind services, and/or access to City facilities or insurance, and

WHEREAS, it would be appropriate for the City to join certain events as an official sponsor due to the number of Tigard citizens participating or volunteering for the event; the role of the event in creating a greater sense of community in Tigard; and the economic, artistic, and cultural benefits of the event to Tigard residents and businesses, and

WHEREAS, official City sponsorship, with a commitment for long term participation, improves the ability of event organizers to plan for the long term and to obtain other sponsors and financial support,

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that the procedure for City Sponsorship of Cultural Events, included in this Resolution and Attachment A, is hereby adopted.

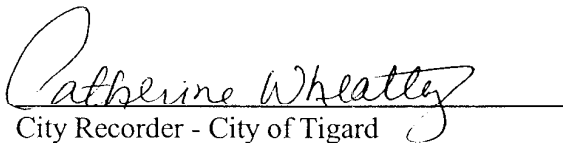
PASSED: This 25th day of January 2000.



~~Mayor - City of Tigard~~

Council President, City of Tigard

ATTEST:


City Recorder - City of Tigard

City Sponsorship of Cultural Events

1. The City of Tigard will formally recognize by Council resolution those community and cultural events that it wishes to sponsor. Sponsorship will continue until terminated by Council resolution, which will provide one year notice of termination.
2. City sponsorship will include City support (direct cash grants, in-kind services, access to facilities or insurance coverage, or a combination of the above) as identified in the sponsoring resolution. If City sponsorship includes direct cash grants, the sponsoring resolution will identify a target funding amount. A target amount may be adjusted, however, during the City's annual budget process.
3. In identifying events for City sponsorship, the City will consider the following factors:
 - a. The number of City residents participating in the event
 - b. The number of City residents volunteering for the event
 - c. The role of the event in creating a greater sense of community and Tigard identity
 - d. Economic, artistic, and cultural benefits of the event to Tigard residents and businesses
 - e. The level of support for the event raised from other sources
4. Events sponsored by the City will be required to list the City as an official sponsor in all publicity and promotional materials.
5. Non-sponsored events may be considered for funding during the City's annual budget process on a year-to-year basis.

AGENDA ITEM # _____
FOR AGENDA OF October 9, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Consideration of an amendment to the franchise agreement granted to AT&T (TCI).

PREPARED BY: Liz Newton DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should the Council approve an amendment to the franchise agreement with AT&T (TCI) extending the deadline for construction of the required system upgrade for 6 months?

STAFF RECOMMENDATION

Adopt the attached resolution approving an amendment to the franchise agreement with AT&T (TCI) extending the deadline for construction of the required system upgrade for 6 months.

INFORMATION SUMMARY

The MACC member jurisdictions granted TCI of Tualatin Valley Inc., whose parent is now AT&T Corporation, a nonexclusive fifteen-year franchise on February 1, 1999. That franchise requires AT&T to complete the upgrade of both the residential cable system and the Public Communications Network (PCN) by no later than January 31, 2002. Currently, AT&T has upgraded approximately 40% of the MACC system including almost all of Beaverton, Aloha, and portions of Hillsboro.

In January 2001, AT&T began slowing its upgrade construction and further notified MACC in February that all upgrade construction had stopped. At that time, AT&T representatives began informal discussions with MACC staff about an extension of the upgrade deadline.

In June 2001, the MACC Board formally authorized MACC staff to negotiate an Upgrade Extension Agreement (Agreement). The final Agreement with AT&T was presented to the Board at the August 22 meeting and following a public hearing, the MACC Board voted to forward their recommendation to the jurisdictions.

This Agreement requires an amendment to our franchise with AT&T and must be passed by all MACC member jurisdictions in order to become effective. If any of the MACC jurisdictions do not approve the agreement, it would be defeated for all the jurisdictions. MACC staff and consultants do not believe that AT&T will complete the upgrade of the residential cable system by the current January 31, 2002, deadline.

Attached is a memo that summarizes the reasons the extension was requested by AT&T and the increased penalties MACC will impose on AT&T if the new deadlines are not met. Also attached is a resolution with attachments that, if approved, would grant the extension. In addition, staff has included a two-page "Question and Answer" prepared by MACC staff.

OTHER ALTERNATIVES CONSIDERED

Deny the resolution to extend the deadline for construction of the system upgrade.

Delay action on the resolution to extend the deadline for construction of the system upgrade.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

Memo from Liz Newton summarizing the issue.

Resolution to approve the franchise amendment.

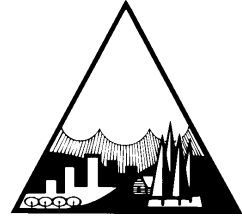
Exhibit “A” to the resolution – the Upgrade Extension Agreement with Attachments A, B, and C.

Upgrade Extension Agreement “Questions and Answers” prepared by MACC staff.

FISCAL NOTES

None.

MEMORANDUM
CITY OF TIGARD, OREGON



TO: Honorable Mayor and City Council Members

FROM: Liz Newton, Assistant to the City Manager

DATE: September 21, 2001

SUBJECT: AT&T Upgrade Extension Request

Background

The MACC member jurisdictions granted TCI of Tualatin Valley Inc., whose parent is now AT&T Corporation, a nonexclusive fifteen-year franchise on February 1, 1999. That franchise requires AT&T to complete the upgrade of both the residential cable system and the Public Communications Network (PCN) by no later than January 31, 2002. Following the grant of the franchise, AT&T began upgrading the system starting from their head end in Beaverton and heading west towards Hillsboro. Currently, AT&T has upgraded approximately 40% of the MACC system including almost all of Beaverton, Aloha, and portions of Hillsboro.

In January 2001, AT&T began slowing its upgrade construction and further notified MACC in February that all upgrade construction had stopped. According to AT&T, construction stopped due to severe financial problems experienced by the company (and other telecommunications providers) as a result of the downturn of the economy, and a significant drop in AT&T stock value. At that time, AT&T representatives began informal discussions with MACC staff about an extension of the upgrade deadline.

In June 2001, the MACC Board formally authorized MACC staff to negotiate an Upgrade Extension Agreement (Agreement). The final Agreement with AT&T was presented to the Board at the August 22 meeting and following a public hearing, the MACC Board voted to forward their recommendation to the jurisdictions.

This Agreement requires an amendment to our franchise with AT&T and must be passed by all MACC member jurisdictions in order to become effective. If all jurisdictions approve, the amendment will become effective when AT&T fulfills the acceptance requirements listed in the ordinance. AT&T would:

- Have until July 31, 2002, to complete the actual upgrade construction on the residential cable system;

- Be required to complete this upgrade on a prescribed timeline based on numbers of homes passed;
- Cooperate with MACC's efforts to audit and certify the upgrade;
- Face significant fines and remedies if they fail to complete the requirements of this agreement, including the potential for a reduction in the term of their franchise, as well as post a \$2 million letter of credit and a \$12 million performance bond;
- Provide additional benefits to non-upgraded subscribers, including a monthly credit, rate freeze, and pay-per-view coupons;
- Complete the upgrade of the PCN on schedule January 31, 2002.

If any of the MACC jurisdictions do not approve the Agreement, it would be defeated for all the jurisdictions. MACC staff and consultants do not believe that AT&T will complete the upgrade of the residential cable system by the January 31, 2002, deadline. MACC would impose \$2,000 per day fines until both upgrades are completed. AT&T would have little incentive to complete the upgrades, and subscribers and PCN users would have little certainty as to when the upgrades would be completed.

EXHIBIT A to Resolution

MACC – GRANTEE UPGRADE EXTENSION AGREEMENT

Recitals

This Agreement is made and entered into by and between the Metropolitan Area Communications Commission (hereinafter "MACC") and TCI of Tualatin Valley, Inc., whose parent company is TCI Cablevision of Oregon, Inc. ("Grantee");

WHEREAS, MACC member jurisdictions and Grantee entered into a Cable Television Services Agreement effective November 1, 1999 (hereinafter "Franchise"); and

WHEREAS, the Franchise requires an upgrade to the residential Cable System and the Public Communications Network and provides deadlines for completions of those upgrades on or before January 31, 2002; and

WHEREAS, Grantee has notified MACC and its member jurisdictions that it will be unable to complete the required system upgrades by the deadline established in the Franchise due to financial constraints; and

WHEREAS, MACC is willing to grant an extension of the deadline for completion of the residential Cable System upgrade without otherwise limiting its rights and remedies under the Franchise, provided certain assurances and considerations are obtained from Grantee in the public interest and contingent on approval by its member jurisdictions; and

WHEREAS, the following conditions precedent have been met;

NOW, THEREFORE, the parties agree as set forth below.

Conditions Precedent

In all cases where requirements of this Agreement predate the date when this Agreement is approved by the parties, it shall be a condition precedent to the effectiveness of this Agreement that such requirements have been timely met.

All MACC member jurisdictions must approve this Agreement.

I. SYSTEM UPGRADE

- A. This Agreement provides for an extension of the deadline for construction of the upgrade of the residential Cable System as required in Section 11.1A.2 of the Franchise (on or before January 31, 2002) to July 31, 2002. Grantee shall have

completed its obligations for the upgrade of the residential Cable System if MACC has certified completion of the following through audits as provided in this Agreement:

- 1) The upgraded Cable System is constructed, and the physical plant is in substantial compliance with the Franchise for a minimum of 22,000 passings to be constructed between April 1, 2001, and February 1, 2002.
- 2) The upgraded Cable System is constructed, defined as completion of building and capable of carrying the signals it is designed to carry, and the physical plant is in substantial compliance with the Franchise and this Agreement, by July 31, 2002; and
- 3) The upgraded Cable System is proofed and is in substantial compliance with all applicable FCC and other pertinent standards contained in the Franchise and this Agreement by August 31, 2002; and
- 4) Upgraded video cable services are activated and available to subscribers, and in compliance with all pertinent standards contained in the Franchise by September 30, 2002.

- B. This Agreement does not extend the deadline for upgrade of the Public Communications Network (PCN). All original PCN sites, and those identified in Attachment A., shall be upgraded and migrated to the new PCN as defined in this Agreement by February 1, 2002. This does not affect the PCN capacity requirements set forth in Section 11.2 B. of the Franchise. Grantee shall have completed its obligations for upgrade of the PCN per Section 11.2 of the Franchise if each of the following occurs by the following deadlines subject to MACC's certification and approval following audits as described in this Agreement:

- 1) All of the network has been upgraded to fiber for the new PCN; and
- 2) All user sites with service contracts are connected and migrated to the new PCN per Section 11.2 A. 3) of the Franchise unless Grantee is unable to migrate the user to the upgraded PCN due to the actions of the PCN user.

II. UPGRADE SCHEDULE FOR RESIDENTIAL CONSTRUCTION

- A. Segment 1: By August 10, 2001, Grantee shall provide MACC with a current report showing where construction has been completed for the upgrade of residential passings.
- B. Segment 2: By August 10, 2001, Grantee shall provide MACC with an advance build schedule for residential passings for this construction period. Between April 1, 2001 and February 1, 2002, Grantee must complete construction of a minimum of 22,000 passings.

- C. 1) Segment 3: By August 10, 2001, Grantee shall provide MACC with a preliminary plan, shown on a monthly basis, for the passings to be constructed during the upgrade extension period (February 1, 2002 through July 31, 2002).
- 2) By November 1, 2001, Grantee must provide MACC with the final build schedule, shown on a monthly basis, for the time period of the upgrade extension.
- 3) By January 15, 2002, Grantee shall provide written documentation of its readiness to complete Segment 3 construction. Such documentation shall demonstrate, at a minimum, that at least the following are substantially completed by this date: a) the fiber backbone is in place; b) any needed power supplies have been permitted and placed (excepting electronics); and c) underground and over-lash construction permits are in place.

This report shall also show the extent of replacement of the existing coaxial system during upgrade activities for Segments 1 and 2.

III. REPORTING

Grantee shall provide MACC with progress report each month throughout the upgrade extension period for the following:

A. Residential Cable System

- 1) Monthly reports: Grantee shall provide MACC with monthly build schedule progress reports for both the original upgrade period (Segment 2) and the upgrade extension period (Segment 3) by the 10th day of each month, beginning in the first month after execution of this Agreement. These reports shall include a written narrative report detailing the nodes constructed during the prior month.
- 2) Grantee shall provide MACC with written notice that the Segment 2 requirements for the upgraded residential Cable System have been constructed on or before February 1, 2002. This notice must state that upgrade construction is completed and the Cable System is in substantial compliance with the Franchise and this Agreement for a minimum of 22,000 residential passings.
- 3) Grantee shall provide MACC with written notice of its completion of construction of Segment 3 -- upgrade of the remainder of the residential Cable System -- on or before August 1, 2002. This notice must state that upgrade construction is completed and the Cable System is in substantial compliance with the Franchise and this Agreement for all residential passings in the Franchise Area.

B. PCN

- 1) By August 10, 2001, Grantee shall provide MACC with the final build schedule that shows, on a monthly basis, upgrade of the PCN.

2) Grantee shall provide MACC with monthly build schedule progress reports by the 10th day of each month, beginning in the first month after execution of this Agreement. These reports shall include a written narrative describing the upgrade construction on the PCN and a list of sites that have been connected and migrated, as defined in this Agreement, to the upgraded PCN fiber during the prior month. The first report provided shall also document PCN upgrade construction from August 1, 2001 forward to the date of this report.

3) Grantee shall provide MACC with written notice of its completion of construction of the upgrade of the PCN on or before February 1, 2002. This notice must state that the PCN fiber upgrade is complete, that all user sites are connected and migrated, as defined in this Agreement, to the new PCN, and that all users have signed a PCN Acceptance Agreement.

C. Effect of completion notices

The completion notices from Grantee are administrative in nature. Failure by Grantee to provide the required completion notices shall not result in any modification to the construction requirements otherwise provided for herein.

IV. CONSIDERATION FOR EXTENSION

A. **MACC Costs:** Grantee shall provide MACC with \$50,000 upon execution of this Agreement. This amount is estimated to cover extraordinary costs for legal, consulting, and other outside or out of pocket expenses related to the negotiation, execution, and enforcement of Grantee's request for an extension of the upgrade deadline. MACC shall provide Grantee with an itemized list of expenses after MACC staff certifies that the upgrade is complete.

B. MACC Subscriber Notices

Grantee shall provide MACC with one complimentary bill stuffer in the first year of this Agreement to allow MACC to notify subscribers of its services and their rights as cable subscribers. For the first year of the requirement, Grantee shall provide for production, insertion, and incremental postage at no charge to MACC. In subsequent years, Grantee shall provide MACC with the right to include bill stuffers and shall pay the costs for insertion and incremental postage; MACC shall be responsible for production costs. The bill stuffer shall be included in subscribers' bills during the first quarter of each calendar year (January 1 – March 31), beginning in 2002. Grantee shall be provided an opportunity to review and approve the content of these bill stuffers. Bill stuffers must conform to Grantee's mailing requirements.

C. **@Home Accounts:** Grantee shall provide MACC with 30 complimentary @Home service accounts (including modems, standard installations, and monthly service), or other substantially equivalent service, over the life of the Franchise. MACC shall give Grantee thirty (30) days advance notice for such installations and Grantee shall be required to provide them only in areas where these services are available. MACC shall designate which agency sites shall receive these modems, installation

and service. Grantee shall be allowed to approve the sites selected for these services to assure that none could be used for commercial users. Selected sites will be provided with @Home service as it is available as of the effective date of this Agreement, or with substantially equivalent service as it is available over the life of the Franchise. Nothing in this Agreement shall prohibit Grantee from requiring selected sites to enter into standard @Home service agreements.

D. Residential Subscribers

1) Subscribers who have not been provided upgraded video services by February 1, 2002, shall receive a \$0.30 credit on their February bill and on each subsequent bill until such subscriber is able to receive the upgraded video services. MACC shall be allowed to review and comment on the descriptions of such credits on subscriber bills.

2) Grantee shall not impose any rate increases for Basic, Expanded Basic, or Standard video cable services on a subscriber until that subscriber is upgraded, and services are activated and available to that subscriber. This provision applies from the date of the execution of this Agreement until MACC has certified that the upgrade is complete.

3) On February 1, 2002, Grantee shall provide all non-upgraded subscribers with coupon(s) worth a minimum of \$16.00 toward Pay-Per-View or other enhanced services.

4) All credits shall be provided only to "basic service customers" -- defined as an individual receiving a bill from Grantee for the provision of cable services to its household, not including "bulk-billed" and commercial customers.

E. PEG

1) Grantee shall reimburse the Designated Access Provider for costs to publicize and notify PEG users and subscribers of channel line-up changes, not to exceed \$5,000.

2) Grantee shall cover all of the costs for printing one bill stuffer, for the Designated Access Provider, including the costs of insertion and any incremental postage costs, not to exceed \$5,000. Bill stuffers must conform to Grantee's mailing requirements.

3) The deadline requirement for relocation of the headend of the Designated Access Provider (Section 9.3.D of the Franchise) is extended to January 31, 2002, and

Grantee shall subsidize this relocation amount up to \$58,000 for one relocation. The Designated Access Provider shall pay all additional costs of this relocation. MACC shall notify Grantee by August 22, 2001, whether the Designated Access Provider has indicated that they want this location to be built using analog or digital equipment.

F. PCN

PCN rates for any agency shall remain at the "legacy level" until a minimum of 50% of that agency's sites are connected and operating on the new PCN.

V. AUDITS

- A. Grantee shall facilitate up to three (3) audits of construction, activation, and certification requirements of the upgraded residential system by MACC or its designee, as described herein. In addition, Grantee shall facilitate additional audits and interim progress evaluations performed by MACC or its designee on both the residential Cable System and the PCN regarding the commitments of this Agreement. These evaluations shall be conducted between the date of execution of this Agreement and the deadlines specified for construction completion. The parties agree that checklists for the residential Cable System and PCN, Attachments B and C, will be used as part of the audit process.
- B. Grantee shall make records available consistent with Section 7.1. of the Franchise, but with no cure period for any violation.
- C. MACC or its designee shall perform an audit within 14 calendar days following the deadline for upgrade construction of 22,000 passings of the residential Cable System and upgrade of the PCN unless unusual circumstances or a force majeure occurrence prevents or delays the audit. Thereafter, MACC shall certify completion of this segment of the upgrade within 14 days of receipt of any clarification, follow-up, or other information needed from Grantee.
- D. MACC or its designee shall perform an audit within 14 calendar days following the deadline for upgrade of the PCN unless unusual circumstances or a force majeure occurrence prevents or delays the audit. Thereafter, MACC shall certify completion of the PCN upgrade within 14 days of receipt of any clarification, follow-up, or other information needed from Grantee.
- E. MACC or its designee shall perform an audit within 14 calendar days following the deadline for upgrade construction of the remainder of the residential Cable System unless unusual circumstances or a force majeure occurrence prevents or delays the audit. Thereafter, MACC shall certify completion of this segment of the upgrade within 14 days of receipt of any clarification, follow-up, or other information needed from Grantee.

VI. REMEDIES AND PERFORMANCE GUARANTEES

- A. Concurrent with its written acceptance of this Agreement, Grantee shall provide MACC with a \$2,000,000 irrevocable Letter of Credit, in a form satisfactory to MACC, to be available for payment of fines that may be imposed under this Agreement and to otherwise secure Grantee's performance of its obligations under

this Agreement. Upon Grantee meeting all of the requirements of this Agreement, MACC will release the Letter of Credit.

- B. Concurrent with its written acceptance of this Agreement, Grantee shall provide MACC with a performance bond, in a form satisfactory to MACC, in the amount of \$12,000,000 to assure its completion of the requirements of this Agreement. Grantee may retain its existing bond as required by Section 5.5 A. of the Franchise in partial satisfaction of this requirement. When MACC certifies that Grantee has fully performed all of its obligations under this Agreement, this bond shall be cancelled provided the \$1,000,000 bond, as required by the Franchise, is in place.

C. Residential Cable System

- 1) If Grantee fails to provide to MACC the required build schedule progress reports on a monthly basis for the upgrade of the residential system (as required in III. A. 1), III. B. 1), III. B. 2) or the required documentation due under II C. by the due dates for those reports and documents, Grantee shall pay MACC an uncontested fine of \$250 per day for every day each item is late to MACC and no cure period is allowed.
- 2) If Grantee fails to meet the monthly cumulative build schedule requirements for the residential Cable System, fines shall accrue at \$10,000 per month until cumulative construction requirements are met.
- 3) If Grantee fails to complete construction of the residential upgrade by July 31, 2002, Grantee shall pay MACC an uncontested fine of \$100,000.
- 4) In addition, Grantee shall pay daily fines established in Section 15.2 of the Franchise of \$1,000 each day thereafter until MACC certifies that the upgrade of the residential Cable System is completed.
- 5) The effective date for imposition of any fines for delay in the total upgrade of the residential Cable System shall not begin prior to 14 calendar days after July 31, 2002.

D. Public Communications Network

- 1) If Grantee fails to provide to MACC the required monthly build schedule progress reports on the upgrade of the PCN, as required in III. B. 1), by the due dates for those reports, Grantee shall pay MACC an uncontested fine of \$250 per day for every day each report is late to MACC and no cure period is allowed.
- 2) If any of the original PCN sites, or those identified on Attachment A., are not upgraded and migrated within 30 days after the timeline date proposed in the build schedule, Grantee shall pay an uncontested fine of \$5,000 for each affected site. These fines shall be delivered to MACC, payable to the specific agency.

Additional \$5,000 fines shall be delivered to MACC, payable to these agencies, every thirty (30) days thereafter that the specific site is not upgraded.

E. Combined Penalty – Segment 2 and PCN

1) Consistent with this Agreement, Grantee shall pay MACC an uncontested fine of \$50,000 if Grantee fails to complete any of the following: upgrade and migration of all original PCN sites, PCN site identified on Attachment A, or Segment 2 of the residential Cable System on or before January 31, 2002.

2) In addition, Grantee shall pay daily \$1,000 fines as established in Section 15.2 of the Franchise each day thereafter until all PCN sites are upgraded.

F. Combined Penalty for Reduction in Franchise Term – Segment 3 and PCN

If the upgrade construction, as required by the Franchise and this Agreement, is not completed as certified by MACC by September 30, 2002, the term of the Franchise shall be reduced by three (3) years per Section 19.11 of the Franchise without prior notice to Grantee.

VII. GENERAL TERMS AND CONDITIONS

A. Terms of this Agreement are contingent on approval by all MACC jurisdictions.

B. The MACC Commission shall determine the use of all funds paid to MACC.

C. Existing Franchise provisions remain in effect in addition to those specified in this Agreement.

D. This Agreement shall be binding on Grantee's successors in interest and assigns. It shall be a condition of any request for approval of a transfer of the Franchise or Cable System or change of control of Grantee that the transferee or new controlling entity specifically accept and agree to be bound by the terms of this Agreement in writing.

E. The remedies provided under this Agreement and under the Franchise are cumulative. Pursuit of one remedy shall not preclude pursuit of any other available remedy.

The remedies provided under this Agreement shall be subject to the process otherwise required under Franchise Section 15 unless this Agreement provides for an uncontested fine or waives a cure period. In the event of a failure by Grantee to complete construction as required by this Agreement, MACC may, in its discretion, draw on the performance bond or letter of credit to secure completion.

F. Payment of all fines due under this Agreement shall occur within thirty (30) calendar days of the date notice or demand for payment by MACC is received by Grantee. "Payment" shall mean receipt by MACC, at MACC's office, of guaranteed funds in the full amount due.

- G. Throughout the term of this Agreement, Grantee shall maintain and file with MACC a designated legal or local address for the service of notices by mail. A copy of all notices from MACC to Grantee shall be sent, postage prepaid, to such address and such notices shall be effective upon the date of mailing. At the effective date of this Agreement, these addresses are:

(1) Senior Vice-President
AT&T Broadband
3075 NE Sandy Blvd
Portland, Oregon 97232

(2) Legal Department
AT&T Broadband
22025 30th Avenue SE
Bothell, Washington 98021

All notices to be sent by Grantee to MACC under this Agreement shall be sent, postage prepaid, and such notices shall be effective upon the date of mailing. At the effective date of this Agreement, this address is:

Administrator
Metropolitan Area Communications Commission
1815 NW 169th Place, Suite 6020
Beaverton, OR 97006-4886

ATTACHMENT A**Future PCN Sites**

Banks City Hall	100 S. Main	Banks
Pacific University	2043 College Way	Forest Grove
Gales Creek School (FDSD)	9125 NW Sergeant	Gales Creek

ATTACHMENT B**MACC – Grantee Residential Cable System Upgrade Audit Checklist****At Headend, Master Hub, or Hub:**

1. Are all subscriber video programming services specified in either the franchise or Grantee's product and services literature available at the Headend?
2. Are the facilities and equipment at the Headend able to deliver high quality signals that meet or exceed FCC technical quality standards?
 - a. Is satellite receive equipment available and functioning at the Headend to facilitate required services?
 - b. Is off air receive equipment available and functioning to facilitate required services?
 - c. Are modulators/demodulators available and functioning for transmission of services up to 550 Mhz or above?
 - d. Is the fiber optic transmission system available and functioning in the downstream direction to support subscriber video services?
 - e. Is the required Emergency Alert System available at the Headend?
 - i. Is it operating within FCC required parameters?
 - f. Is equipment to facilitate digitally compressed video services available and functioning at the Headend?
 - g. Is addressable equipment available and functioning at the Headend to facilitate required services?
3. Is the return system in place and operating such that it could support two-way high speed Internet access?
 - a. Is fiber optic upstream transport equipment available and functioning to facilitate the return system?
 - b. Is electronic equipment available and functioning to facilitate upstream transmission?
4. Is standby power generating capacity capable of providing at least 12 hours of emergency operation available at the Headend?
 - a. Is there a back-up generator?

- i. Is it operational?
- b. Is there a –48 VDC battery system?
 - i. Is it operational?
- 5. Is the Headend, Master Hub or Hub grounded in accordance with Code requirements?

Distribution System:

For all distribution system areas checked, the following specifications shall be met or exceeded for 95% of the test results:

1. Does the system use a fiber to the neighborhood node architecture?
 - a. Does each node size equal 1,500 customers or less?
2. Is the location active?
3. Do the system active electronics meet or exceed transport capabilities of 550 MHz?
4. Do the system passive devices meet or exceed transport capabilities of 550 MHz?
5. Does the location meet all required FCC performance parameters in the downstream direction?
 - a. Carrier to noise meets or exceeds 43 dB
 - b. Carrier to coherent distortion meets or exceeds –51 dB
 - c. In channel frequency response is less than or equal to +/-2 dB
 - d. Frequency response across the passband (peak to valley) meets or is lower than 13 dB
 - e. Hum modulation is 3% or less
 - f. Visual/aural signal level differential is between 10 dB and 17 dB
 - g. Adjacent channel visual signal level variation is 3 dB or less
 - h. All drop locations provide a minimum 3 dB signal level at the end of a 100-foot drop

6. Required spectrum is activated in the upstream direction
7. Stand-by powering is available and provides back-up power for two hours or more
8. System converters carry signals in accordance with manufacturers' specifications with a channel capacity that meets or exceeds 550 Mhz

Physical Plant Characteristics:

For all physical plant checked, the following specifications shall be met or bettered for 95% of the test results:

1. All equipment is grounded/bonded at pole locations in accordance with Code requirements.
2. All equipment is grounded/bonded at pedestal locations in accordance with Code requirements.
3. Aerial plant is in compliance with all applicable National Electric Safety Code and other pertinent Code requirements.

Note: All system problems found, including those that are evidenced 5% of the time or less must be promptly corrected so that affected areas of the system will achieve full compliance with required specifications.

ATTACHMENT C**MACC – Grantee PCN Audit Checklist**

All specifications below are to be completed or met 100% of the time.

At the Headend, Master Hub, or Hubs:

1. Are all active PCN fibers for PCN sites with contracts for service terminated and spliced at the hubs and Headend?
2. Is all required equipment available and configured at the Headend and Hub for each service offered?
 - a. ATM/T-1
 - b. ATM/10 Megabit
 - c. ATM/100 Megabit
 - d. Gigabit Ethernet
 - e. Ethernet/10 Megabit
 - f. Ethernet/100 Megabit
 - g. Ethernet/T-1
 - h. Video receive
 - i. Video receive/transmit
3. For each service contracted for, are required network management/monitoring and control hardware and software in use and performing satisfactorily?
 - a. ATM/T-1
 - b. ATM/10 Megabit
 - c. ATM/100 Megabit
 - d. Gigabit Ethernet
 - e. Ethernet/10 Megabit
 - f. Ethernet/100 Megabit
 - g. Ethernet/T-1
 - h. Video receive
 - i. Video receive/transmit
4. Is all PCN equipment connected to the UPS or –48 VDC battery system?

5. Is all PCN equipment connected to the back-up generator?
6. Is PCN equipment in a controlled area?
7. Are procedures in place for necessary access by PCN user personnel?
8. Is all PCN equipment properly grounded/bonded at the Headend and Hub?
9. Is the fiber transport system at the Headend and Hub for the PCN operating in both the upstream and downstream directions?
10. Are all disaster recovery procedures in place at the Headend and Hub for PCN services?
11. Are all required PCN interconnections routed through the Headend operating?
12. Is the physical plant leaving/entering the Headend and Hub in compliance with all pertinent NESC and other codes concerning clearances and other pertinent specifications?

At the Node/Splice Location:

1. Is required initial PCN and excess capacity available at each location?
2. Is the physical plant in compliance with all pertinent code and other requirements at each location?

Distribution Plant:

Does the PCN plant meet all required NESC and other specifications at the locations checked?

At User Sites with Contracts for Service:

1. Does the PCN drop meet all required physical plant specifications pursuant to the NESC and other applicable codes?

2. Is the PCN terminated at the user site for contracted services?
3. Is Grantee-supplied transport equipment configured and operating at the user site?
4. Is all transport equipment powered and grounded/bonded at the user site?
5. Are required service levels being provided at each user location for the services the site has contracted for:
 - a. ATM/T-1
 - b. ATM/10 Megabit
 - c. ATM/100 Megabit
 - d. Gigabit Ethernet
 - e. Ethernet/10 Megabit
 - f. Ethernet/100 Megabit
 - g. Ethernet/T-1
 - h. Video receive
 - i. Video receive/transmit
6. Can throughput be measured and documented to verify provision of required service levels?
7. Are users being provided with required PCN performance data and associated reports?
8. Has the PCN met required network availability parameters at each user location?
9. Are users receiving required service response and required trouble resolution reports from Grantee?

Upgrade Extension Agreement
“Questions & Answers”
(Prepared by MACC Staff)

Q. 1 What assurances do we have that AT&T will complete this upgrade by the end of the extension period?

A. AT&T proposed this timeline to MACC. Should they fail to make their self-imposed deadline, MACC will impose significant fines and other remedies, up to, and including reducing the term of their Franchise.

Q. 2 Why are they upgrading the PCN on time and seeking an extension for the upgrade of the residential cable system?

A. The major construction work that is taking place for the upgrade of the residential cable system is the placement of a fiber backbone throughout the Franchise area. Since the PCN is carried on that same fiber backbone, it is easier to upgrade the 200 PCN sites to fiber during the next several months while this backbone is being built. Full upgrade of the residential cable system, in addition to the fiber backbone, requires changing out thousands of electronic devices and power supplies above and under streets that serve over 100,000 subscriber homes. This work will be done from January through July of 2002.

Q. 3 How much does this upgrade costs AT&T?

A. Between \$40-50 million dollars.

Q. 4 When will my jurisdiction be upgraded?

A. Since AT&T is still designing the upgrade of about half of the system, AT&T has not established a schedule for construction in specific jurisdictions. AT&T did commit to the MACC Board to provide an estimated completion schedule, by geographic area, by January 1, 2002.

Q. 5 Is the MACC area the only one affected by AT&T's financial problems?

A. No, AT&T has delayed or stopped system upgrades and other capital investment across the country. MACC is the only jurisdictions in the northwest (and in most of the country) where construction will continue if the upgrade extension is granted.

Q. 6 Since AT&T will be compressing this upgrade into a few months, will citizens experience a lot of additional construction disruption in local streets and neighborhoods?

- A. No. Since this is an upgrade of the cable system and not a complete rebuild, citizens should not experience a significant increase in right-of-way activity during the next twelve months. Old underground cable will not be dug up, but will be "pulled out" and replaced by fiber. Most of the aerial cable in neighborhoods will remain, and only the power supplies and amplifiers attached to it will be replaced.

Q. 7 Excite@Home is having financial trouble -- what happens to AT&T's @Home service if they go out of business?

- A. Excite@Home is the content provider for the @Home service used by AT&T (AT&T owns a substantial amount of the company). AT&T assures us that it will continue to offer @Home service even if Excite@Home ceases operations.

Q. 8 What are "passings"?

- A. Passing refers to the homes passed by the cable system or plant. In the MACC service area there are about 160,000 passings, or homes passed by cable plant. Only about 64% of homes passed by the cable system subscribe to cable service. There are just over 100,000 cable subscribers in the MACC system.

Q. 9 What is the Public Communications Network?

- A. The Public Communications Network (known as the PCN) is a separate cable system owned by AT&T that provides high-speed communications among local governments and schools for a fee in the MACC area. The PCN currently connects about 200 user sites and is used by agencies for high-speed data, Internet/email service, and video services. The PCN is being rebuilt into an all fiber network as part of AT&T's upgrade.

If you have additional questions, please contact Bruce Crest, MACC Administrator at 503-645-7365 x 200, or Sarah Hackett, Senior Communications Analyst at x 206.

AGENDA ITEM # _____
FOR AGENDA OF October 9, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Approve Resolution Setting Policy on Per Diem Allowances for the City Council and Executive Staff When Attending National Conferences

PREPARED BY: Cathy Wheatley DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should the City Council approve a resolution that sets policy on per diem allowances for the City Council and Executive Staff when attending national conferences.

STAFF RECOMMENDATION

Adopt the proposed resolution.

INFORMATION SUMMARY

The purpose of the proposed resolution is to identify and provide guidelines with regard to expenditures incurred by the City Council and Executive Staff members while attending national conferences. In addition, these guidelines are intended to provide City Council and Executive staff members, who incur authorized business expenses for travel, subsistence, and related expenses while attending national conferences, a reasonable method for payment of necessary expenses.

In the research of this issue, per diem rates from other jurisdictions ranged \$30 - \$38 for meals only. The proposed resolution recommends a per diem rate of \$40 per day, which is also to cover all incidental expenses including bus, taxi, tolls, parking, ferry, bellman, tips for services, and the like. No receipts would be required.

There may be tax implications for per diem payments where receipts are not kept (Form 1099). Staff is researching this question and has offered an option in the proposed resolution for the City Council to consider. The option would be for reimbursement (up to \$40 per day) upon presentation of receipts for business expenses incurred for travel, subsistence and related expenses.

OTHER ALTERNATIVES CONSIDERED

Modify the proposed resolution.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

1. Proposed Resolution.

FISCAL NOTES

Expenditures would be capped at \$40 per day for meals and incidental expenses (not including registration and lodging) for any City Council or Executive Staff member attending a national conference.

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CITY OF TIGARD, OREGON

RESOLUTION NO. 01-_____

A RESOLUTION SETTING POLICY ON PER DIEM ALLOWANCES FOR THE CITY COUNCIL AND EXECUTIVE STAFF WHEN ATTENDING NATIONAL CONFERENCES

WHEREAS, the purpose of this resolution is to identify and provide guidelines with regard to expenditures incurred by the City Council and Executive Staff members while attending national conferences; and

WHEREAS, the policy stated herein is intended to provide a reasonable method for payment of necessary expenses incurred by City Council and Executive Staff members while attending national conferences.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: Option 1 - A per diem amount will be allowed for City Council and Executive Staff members attending national conferences in the amount of \$40 per day, including travel days. Said amount is to pay for authorized business expenses relating to travel, subsistence, and incidental expenses including bus, taxi, tolls, ferry, bellman, tips for services and the like. No receipts are required.

SECTION 2: Option 2 - If a per diem amount is not requested by a City Council or Executive Staff Member who instead chooses to keep a record and supply receipts of expenditures, a limit of \$40 per day for such expenses shall be imposed while attending a national conference. Any advanced funds that were not expended or supported by receipts shall be returned to the City. If a receipt is not readily available for incidental expenses that are less \$10, (including bus, taxi, tolls, ferry, bellman, tips for services and the like) then documentation can be provided by the City Council or Executive Staff member and allowed as an expense to be paid by the City.

EFFECTIVE
DATE: _____, 2001.

PASSED: This _____ day of _____ 2001.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

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AGENDA ITEM # _____
FOR AGENDA OF October 9, 2001

CITY OF TIGARD, OREGON
LOCAL CONTRACT REVIEW BOARD AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Approve Awarding a Personal Services Contract to Precision Graphics for Cityscape Newsletter Printing Services

PREPARED BY: Cathy Wheatley DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should the Local Contract Review Board approve the award of a personal services contract for Cityscape newsletter printing services to Precision Graphics.

STAFF RECOMMENDATION

Approve the award of a personal services contract for Cityscape newsletter printing services to Precision Graphics for one year unless otherwise terminated or renewed up to four (4) additional twelve-month periods.

INFORMATION SUMMARY

Attached is a memorandum describing the rationale for the recommendation of the award of a personal services contract to Precision Graphics to print the Cityscape newsletter. City Recorder Cathy Wheatley is the editor of the Cityscape and, as one of her goals, she was assigned the task to redesign the Cityscape format. Requests for proposals were solicited so that additional color and photographs could be added for potential redesign recommendations. Proposed redesign options will be discussed with the City Council before implementation.

OTHER ALTERNATIVES CONSIDERED

Provide additional direction/ideas for redesign of the Cityscape.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Community Character & Quality of Life – Communication: “Citizen involvement opportunities will be maximized by providing educational programs on process, assuring accessibility to information in a variety of formats...”

ATTACHMENT LIST

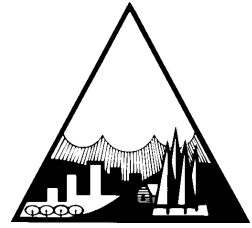
1. Memorandum from City Recorder Cathy Wheatley dated September 27, 2001.
2. A chart showing the bid results from all four proposals.
3. Draft Personal Services Contract with the “RFP—To Provide Printing Services for the City’s Newsletter” attached to the contract.

FISCAL NOTES

Funds budgeted this fiscal year for Cityscape printing totaled \$30,600. Costs for printing Cityscape newsletters so far this fiscal year amounted to \$7,737. Therefore \$22,863 remains for printing costs.

If the contract is awarded to Precision Graphics, there will be sufficient funding to add photographs and one more color for the remaining issues to be produced this fiscal year if we keep the Cityscape to eight pages. Because we do not plan to implement a redesign until the January issue at the earliest, we would have enough funds to print two issues (November & December) in our current format, add another color to all remaining issues in the fiscal year and also print one twelve-page, two-color issue.

MEMORANDUM



TO: City of Tigard Local Contract Review Board

FROM: Cathy Wheatley, City Recorder

RE: Award of Personal Services Contract - *Cityscape*

DATE: October 2, 2001

Attached is information displaying the quotes received in response to the City's recent request for proposals for *Cityscape* printing. City Buyer Terry Muralt and City Recorder & *Cityscape* Editor Cathy Wheatley reviewed the request for quotes and recommend that Precision Graphics be selected to provide printing services for the next five years.

Interested parties were asked to provide cost information to allow the City several options for producing the newsletter as we look to revise and improve the monthly communication to Tigard residents to include photographs and may include use of color.

In addition to price, proposals were rated on references, ability to meet the deadlines, and quality/dependability. References were checked for American Eagle Graphics and Precision Graphics. Two other proposals were received (see attached chart); however, they were not considered as finalists because the pricing quotes were significantly higher than American Eagle Graphics and Precision Graphics.

Here is the rating sheet for American Eagle Graphics and Precision Graphics:

<i>Criteria/Maximum Points</i>	American Eagle Graphics	Precision Graphics
References/35	30	35
Deadlines/25	20	25
Price/20	7	12
Quality/Dependability/20	15	18
Total	72	90

References -- Quality and Dependability: Precision Graphics references advised that Precision staff was responsive, pleasant to work with, punctual, thorough and the quality of the product was "good," "great," and "fine." American Eagle Graphics also had good references; however, American has been the City's vendor for the *Cityscape* for the past two years. We have experienced some problems working with American Eagle when we were billed incorrect amounts (not per contract). In addition, last year American Eagle informed us they were going to increase our rates by more than \$1200 per issue (month) for an 8-page issue, which is the size we most often print. Price

increases were also noted for a 12-page and 16-page edition. We advised this was not acceptable and relied on contract language to advise American Eagle we were giving notice that we would go out for proposals if they charged this new rate. American Eagle decided to honor the terms of the contract and we have had no problems, however, the billing continues to be inaccurate. The City pays the amount specified in the contract.

Deadlines: Both American and Precision indicated they could meet the deadlines as specified in the request for proposal. The City's experience with American Eagle is that they missed a deadline for one Cityscape because of staffing problems, which resulted in the Cityscape being delivered to residents several days late (after the start of the month.)

Price: Points were awarded on the basis that Precision Graphics submitted the lowest price quotes for six out of ten categories, including the 8-page newsletter, which is the size newsletter we most often print at this time.

Bid Results

City of Tigard
RFP – Printing Services for the City Newsletter
Closed: 9/21/01 at 3:00 PM

Vendor	No. of Pages	Price for 1 color	Price for 2 colors	Price for 4 colors	Photo's Price/unit
Millennium Graphics & Forms	8 page	\$3,875.00	\$5,875.00	\$7,175.00	\$10.00 each
	12 page	\$3,975.00	\$5,975.00	\$7,375.00	
	16 page	\$5,075.00	\$7,375.00	\$9,175.00	
Vendor	No. of Pages	Price for 1 color	Price for 2 colors	Price for 4 colors	Photo's Price/unit
Precision Graphics	8 page <i>Low Bid</i>	\$2,019.47 <i>Low Bid</i>	\$2,352.95 <i>Low Bid</i>	\$3,880.79 <i>Low Bid</i>	\$27.00ea B&W (\$15.00 ea if on disk)
	12 page	\$3,522.79	\$4,050.28	\$6,453.67	
	16 page <i>Low Bid</i>	\$3,720.68 <i>Low Bid</i>	\$4,463.34 <i>Low Bid</i>	\$8,123.96 <i>Low Bid</i>	
Vendor	No. of Pages	Price for 1 color	Price for 2 colors	Price for 4 colors	Photo's Price/unit
American Eagle Graphics	8 page	\$2,106.00	\$2,520.00	\$4,116.00	\$8.00 each <i>Low Bid</i>
	12 page <i>Low Bid</i>	\$3,144.00 <i>Low Bid</i>	\$3,765.00 <i>Low Bid</i>	\$6,159.00 <i>Low Bid</i>	
	16 page	\$4,132.00	\$4,960.00	\$8,152.00	
Vendor	No. of Pages	Price for 1 color	Price for 2 colors	Price for 4 colors	Photo's Price/unit
Michaels Printing	8 page	\$4,396.00	\$4,698.00	\$6,170.00	\$9.00 each
	12 page	\$6,197.00	\$6,648.00	\$8,856.00	
	16 page	\$7,193.00	\$7,715.00	\$10,478.00	

CITY OF TIGARD, OREGON

PERSONAL SERVICES CONTRACT

THIS AGREEMENT made and entered into this 9th day of October, 2001 by and between the CITY OF TIGARD, a municipal corporation of the State of Oregon, hereinafter called CITY, and Precision Graphics, hereinafter called CONTRACTOR.

R E C I T A L S

CITY has need for the services of a company with a particular training, ability, knowledge, and experience possessed by CONTRACTOR, and

City has determined that Precision Graphics is qualified and capable of performing the professional services as CITY does hereinafter require, under those terms and conditions set forth:

AGREEMENT: The parties agree as follows:

1. **SERVICES TO BE PROVIDED:**

CONTRACTOR shall initiate services immediately upon receipt of CITY'S notice to proceed, together with an executed copy of this Agreement. CONTRACTOR agrees to complete work that is detailed in Exhibit "A" and by this reference made a part hereof.

2. **EFFECTIVE DATE AND DURATION:**

This Agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, on October 8, 2002 unless otherwise terminated or renewed up to four (4) additional twelve-month periods. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. **COMPENSATION:**

CITY agrees to pay CONTRACTOR for performance of those services described in the following table for 24,000 copies of the Cityscape newsletter:

Vendor	No. of Pages	Price for 1 color	Price for 2 colors	Price for 4 colors	Photo's Price/unit
Precision Graphics	8 page	\$2,019.47	\$2,352.95	\$3,880.79	\$27.00ea B&W
	12 page	\$3,522.79	\$4,050.28	\$6,453.67	
	16 page	\$3,720.68	\$4,463.34	\$8,123.96	

Payment shall be based upon the following applicable terms:

- a. Payment by CITY to CONTRACTOR for performance of services under this Agreement includes all expenses incurred by CONTRACTOR, with the exception of expenses, if any identified in this Agreement as separately reimbursable.
- b. Payment will be made in installments based on CONTRACTOR'S invoice, subject to the approval of the City Manager, and not more frequently than monthly. Payment shall be made only for work actually completed as of the date of invoice.
- c. Payment by CITY shall release CITY from any further obligation for payment to CONTRACTOR, for services performed or expenses incurred as of the date of the invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.
- d. CONTRACTOR shall make payments promptly, as due, to all persons supplying labor or materials for the prosecution of this work.
- e. CONTRACTOR shall not permit any lien or claim to be filed or prosecuted against the CITY on any account of any labor or material furnished.
- f. CONTRACTOR shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- g. If CONTRACTOR fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to CONTRACTOR or a subcontractor by any person as such claim becomes due, CITY'S Finance Director may pay such claim and charge the amount of the payment against funds due or to become due the CONTRACTOR. The payment of the claim in this manner shall not relieve CONTRACTOR or their surety from obligation with respect to any unpaid claims.
- h. CONTRACTOR shall pay employees at least time and a half pay for all overtime worked in excess of 40 hours in any one week except for individuals under the contract who are excluded under ORS 653.010 to 653.261 or under 29 USC sections 201 to 209 from receiving overtime.
- i. CONTRACTOR shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of CONTRACTOR or all sums which CONTRACTOR agrees to pay for such services and all moneys and sums which CONTRACTOR collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- j. The CITY certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. OWNERSHIP OF WORK PRODUCT:

CITY shall be the owner of and shall be entitled to possession of any and all work products of CONTRACTOR which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by CONTRACTOR prior to termination of this Agreement by CONTRACTOR or upon completion of the work pursuant to this Agreement.

5. ASSIGNMENT/DELEGATION:

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If CITY agrees to assignment of tasks to a subcontract, CONTRACTOR shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by CITY of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and CITY.

6. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR:

CONTRACTOR certifies that:

- a. CONTRACTOR acknowledges that for all purposes related to this Agreement, CONTRACTOR is and shall be deemed to be an independent contractor as defined by ORS 670.700 and not an employee of CITY, shall not be entitled to benefits of any kind to which an employee of CITY is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that CONTRACTOR is found by a court of law or any administrative agency to be an employee of CITY for any purpose, CITY shall be entitled to offset compensation due, or to demand repayment of any amounts paid to CONTRACTOR under the terms of this Agreement, to the full extent of any benefits or other remuneration CONTRACTOR receives (from CITY or third party) as a result of said finding and to the full extent of any payments that City is required to make (to CONTRACTOR or to a third party) as a result of said finding.
- b. The undersigned CONTRACTOR hereby represents that no employee of the CITY, or any partnership or corporation in which a CITY employee has an interest, has or will receive any remuneration of any description from CONTRACTOR, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

If this payment is to be charged against Federal funds, CONTRACTOR certifies that he or she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.

CONTRACTOR and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

- c. CONTRACTOR certifies that it currently has a CITY business license or will obtain one prior to delivering services under this Agreement.
- d. CONTRACTOR is not an officer, employee, or agent of the CITY as those terms are used in ORS 30.265.

7. INDEMNIFICATION:

CITY has relied upon the professional ability and training of CONTRACTOR as a material inducement to enter into this Agreement. CONTRACTOR warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a contractor's work by CITY shall not operate as a waiver or release.

CONTRACTOR agrees to indemnify and defend the CITY, its officers, agents and employees and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except liability arising out of the sole negligence of the CITY and its employees. Such indemnification shall also cover claims brought against the CITY under state or federal worker's compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

8. INSURANCE:

CONTRACTOR and its subcontractors shall maintain insurance acceptable to CITY in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of CONTRACTOR'S activities or work hereunder, including the operations of its subcontractors of any tier.

The policy or policies of insurance maintained by the CONTRACTOR and its subcontractor shall provide at least the following limits and coverages:

a. Commercial General Liability Insurance

CONTRACTOR shall obtain, at contractor's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	2,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one fire)	50,000
Medical Expense (Any one person)	5,000
Employers Liability	500,000

b. Commercial Automobile Insurance

CONTRACTOR shall also obtain, at contractor's expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000.

c. Workers' Compensation Insurance

The CONTRACTOR, its subcontractors, if any, and all employers providing work, labor or materials under this Contract that are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

d. Additional Insured Provision

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the CITY deems necessary shall include the CITY, its officers, directors, and employees as additional insureds with respect to this contract.

e. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the CITY. Any failure to comply with this provision will not affect the insurance coverage provided to the CITY. The 30 days notice of cancellation provision shall be physically endorsed on to the policy.

f. Insurance Carrier Rating

Coverages provided by the CONTRACTOR must be underwritten by an insurance company deemed acceptable by the CITY. The CITY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

g. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the CONTRACTOR shall furnish a Certificate of Insurance to the CITY. No contract shall be effected until the required certificates have been received and approved by the CITY. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.

h. Independent Contractor Status

The service or services to be rendered under this contract are those of an independent contractor. CONTRACTOR is not an officer, employee or agent of the CITY as those terms are used in ORS 30.265.

i. Primary Coverage Clarification

The parties agree that CONTRACTOR'S coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the CITY is excess and not contributory insurance with the insurance required in this section.

j. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability, professional liability, pollution and errors and omissions policies required by this contract.

CONTRACTOR'S insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to CITY. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of CITY, in lieu thereof, a certificate in form satisfactory to CITY certifying to the issuance of such insurance shall be forwarded to:

Terry Muralt, Buyer
City of Tigard
13125 SW Hall Blvd.
Tigard, Oregon 97223

Such policies or certificates must be delivered prior to commencement of the work.

The procuring of such required insurance shall not be construed to limit contractor's liability hereunder. Notwithstanding said insurance, CONTRACTOR shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

9. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS AND MAKING PAYMENTS.

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail or fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

CITY OF TIGARD

Terry Muralt, Buyer
13125 SW Hall Blvd.
Tigard, Oregon 97223

Business Phone: 503-639-4171 Ext. 324

Business Fax: 503-639-1471

Email Address: terry@ci.tigard.or.us

CONTRACTOR

Precision Graphics
9254 SW Tualatin-Sherwood Road
Tualatin, OR 97062

Business Phone: 503-692-1000

Business Fax: 503—692-6681

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

10. **MERGER:**

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

11. **PROFESSIONAL SERVICES:**

The CITY requires that services provided pursuant to this agreement shall be provided to the CITY by a CONTRACTOR which does not represent clients on matters contrary to CITY interests. Further, CONTRACTOR shall not engage services of an attorney and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to CITY interests.

Should the CONTRACTOR represent clients on matters contrary to CITY interests or engage the services on an attorney and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to CITY interests, CONTRACTOR shall consult with the appropriate CITY representative regarding the conflict.

After such consultation, the CONTRACTOR shall have 30 days to eliminate the conflict to the satisfaction of the CITY. If such conflict is not eliminated within the specified time period, the agreement may be terminated pursuant to Section 13 (b - iii) of this agreement.

12. **TERMINATION WITHOUT CAUSE:**

At any time and without cause, CITY shall have the right in its sole discretion, to terminate this Agreement by giving notice to CONTRACTOR. If CITY terminates the contract pursuant to this paragraph, it shall pay CONTRACTOR for services rendered to the date of termination.

13. **TERMINATION WITH CAUSE:**

- a. CITY may terminate this Agreement effective upon delivery of written notice to CONTRACTOR, or at such later date as may be established by CITY, under any of the following conditions:
- i. If CITY funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds
 - ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
 - iii. If any license or certificate required by law or regulation to be held by CONTRACTOR, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
 - iv. If CONTRACTOR becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against CONTRACTOR, if a receiver or trustee is appointed for CONTRACTOR, or if there is an assignment for the benefit of creditors of CONTRACTOR.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

- b. CITY, by written notice of default (including breach of contract) to CONTRACTOR, may terminate the whole or any part of this Agreement:
- i. If CONTRACTOR fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
 - ii. If CONTRACTOR fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from CITY, fails to correct such failures within ten (10) days or such other period as CITY may authorize.
 - iii. If CONTRACTOR fails to eliminate a conflict as described in Section 11 of this agreement.

The rights and remedies of CITY provided in the above clause related to defaults (including breach of contract) by CONTRACTOR shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If CITY terminates this Agreement under paragraph (b), CONTRACTOR shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by CONTRACTOR bear to the total services otherwise required to be

performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by CITY due to breach of contract by CONTRACTOR. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

14. ACCESS TO RECORDS:

CITY shall have access to such books, documents, papers and records of CONTRACTOR as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

15. FORCE MAJEURE:

Neither CITY nor CONTRACTOR shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disenabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

16. NON-WAIVER:

The failure of CITY to insist upon or enforce strict performance by CONTRACTOR of any of the terms of this Agreement or to exercise any rights hereunder, should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

17. NON-DISCRIMINATION:

CONTRACTOR agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statues, rules, and regulations. CONTRACTOR also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

18. ERRORS:

CONTRACTOR shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

19. EXTRA (CHANGES) WORK:

Only the City Recorder may authorize extra (and/or changes) work. Failure of CONTRACTOR to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and CONTRACTOR thereafter shall be entitled to no compensation whatsoever for the performance of such work.

20. WARRANTIES:

All work shall be guaranteed by CONTRACTOR for a period of one year after the date of final acceptance of the work by the owner. CONTRACTOR warrants that all practices and procedures, workmanship and materials shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve CONTRACTOR from liability under warranties contained in or implied by this Agreement.

21. ATTORNEY'S FEES:

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

22. GOVERNING LAW:

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

23. COMPLIANCE WITH APPLICABLE LAW:

CONTRACTOR shall comply with all federal, state, and local laws and ordinances applicable to the work under this Agreement, including those set forth in ORS 279.310 to 279.320.

24. CONFLICT BETWEEN TERMS:

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

25. AUDIT:

CONTRACTOR shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the contract period. CONTRACTOR agrees to permit CITY, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

26. SEVERABILITY:

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

27. COMPLETE AGREEMENT:

This Agreement and attached exhibits constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. CONTRACTOR, by the signature of its authorized representative, hereby acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, CITY has caused this Agreement to be executed by its duly authorized undersigned officer and CONTRACTOR has executed this Agreement on the date hereinabove first written.

CITY OF TIGARD

By: William A. Monahan, City Manager

Date

CONTRACTOR – PRECISION GRAPHICS

By:

Date

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CITY OF TIGARD
RFP - TO PROVIDE PRINTING SERVICES
FOR THE CITY'S NEWSLETTER

I. INTRODUCTION

The City of Tigard is requesting proposals from firms interested in providing printing services for the City's Newsletter. The "Cityscape" is a City newsletter issued once a month to Tigard area residents. Any proposals received will be held in confidence until the Local Contract Review Board has approved a recommendation for award. The City shall be the sole judge in determining award of any contract and reserves the right to reject all proposals.

This RFP contains the instructions governing the proposal to be submitted and the material to be included therein, mandatory requirements, which must be met to be eligible for consideration, contractor's responsibilities during the term of the contract, and other requirements to be met by each proposal.

II. PROPOSED TIMELINES

September 13, 2001	Advertisement and Release of Proposals
September 21, 2001	Deadline for Submission of Proposals
October 9, 2001	Award of Contract by Local Contract Review Board
October 15, 2001	Commencement of Services

NOTE: The City reserves the right to modify this schedule at the City's discretion. Proper notification of changes in the will be made to all interested parties.

III. SCOPE OF SERVICE

The selected proposer shall enter into a contract with the City of Tigard to provide printing services as follows:

- The City shall deliver either a camera-ready copy or disk to the printer based on an agreed-upon schedule.
- The page count shall be for an 8, 12, and 16 page newsletter.
- The newsletter is published once a month. Pricing should be based on printing a quantity of 25,000 copies a month.
- Paper shall be 60lb white uncoated book or match sample included in this RFP.
- Ink color shall be 1 color, 2 color or 4 color.

- The current size of paper is flat 11 x 17 folded in half to 8.5 x 11 and refolded to 5.5 x 8.5 for mailing. No saddle stitching required.
- Printing and mailing shall be completed within 4 days of receipt of copy. City needs a guarantee from the printer of meeting no more than a four full working day turnaround time. If printer is late, will City receive a discount?
- Printer shall shoot in photos at a price per photo.
- Printer shall deliver over-runs to City.
- City shall take care of providing postage to Post Office for bulk mailing.
- Printer shall; print, fold, bundle and label by carrier routes for Post Office and deliver to Main Post Office in Portland on NW Hoyt St. The City shall provide printer with carrier route numbers and number of copies required for each carrier route.

IV. PROPOSAL SUBMITTAL REQUIREMENTS

Each responsible proposer shall, at a minimum, address the following minimum qualifications:

1. The proposer must have been in the printing business for at least 5 years.
2. The dependability of the service you will provide the City is very important. Please provide a list of three (3) clients that we may contact in which you have performed similar work.
3. Proposer shall submit a description of information that would need to be provided by the City in conjunction with the printing services.
4. Proposer shall designate one or more person(s) responsible for Contractor's work under this contract. Please provide to the City the name(s) and telephone number(s) of such person(s).
5. The successful proposer shall be required to enter into a contract with the City to provide the said services. A sample is attached for reference.
6. The proposer shall comply with the items outlined in Section III, Scope of Service.

V. ADDITIONAL INFORMATION REQUESTED:

The City is in the process of researching new layout formats and folding options for the City newsletter. The City is requesting that vendors submitting a proposal include with their proposal samples of different styles/ideas of formatting and folding of previous jobs that the vendor has either designed and/or printed. Any information submitted in this regard will not be used in evaluation and award of the proposal.

The City reserves the right to change the format during the term of the contract, which may include a change in paper, paper size and folding. Once the City determines the extent of the

changes, the City and Contractor will determine whether there will be any cost changes in performing the contracted service. Depending on any cost changes to implement a new format and folding of the newsletter, the City shall determine at that time whether it warrants a new bidding process.

VI. PROPOSAL EVALUATION AND AWARD PROCEDURES

1. Evaluation: A Selection Committee will conduct evaluations. Proposals will be evaluated using a point system. Each criterion is given a "Maximum Points Allowed". Cost, although important, is not the sole criteria for selection.

EVALUATION OF PROPOSALS

Criterion	Maximum Points Allowed
1. References	35
2. Meet printing and mailing deadlines	25
3. Price	20
4. Qualifications/dependability	20
 TOTAL POSSIBLE POINTS	 100

Each proposal will receive up to the maximum points allowed for each of the evaluation criteria for a total score not to exceed 100 points.

2. Award: The award will be made to the respondent whose proposal is determined to be the most responsive within a competitive price range based upon evaluation of the information furnished under this RFP.
3. INVESTIGATION OF REFERENCES: The City reserves the right to investigate references and the past performance of any proposer with respect to its successful performance of similar projects, quality of work, compliance with specifications and contractual obligations, its completion or delivery of a project on schedule and its lawful payment of employees and workers.
4. CLARIFICATION OF PROPOSALS: The City reserves the right to obtain clarification of any point in a firm's proposal or to obtain additional information necessary to properly evaluate or particular proposal. Failure of a Proposer to respond to such a request for additional information or clarification could result in rejection of the firm's proposal.

VII. INSTRUCTIONS TO PROPOSERS

1. **EXECUTION OF PROPOSAL:** Proposals must be executed in the name of the firm followed by the signature of the officer authorized to sign for the firm. The address of the proposer shall be typed or printed on the proposal form and shall include tax identification numbers and the state in which it is incorporated, if applicable. Proposals which are incomplete or which are conditioned in any way, or which contain erasures or alterations, may be rejected as incomplete.
2. **OPENING DATE:** Proposals will be received until 3:00 p.m., on September 21, 2001 at 13125 SW Hall Blvd., Tigard, Oregon 97223. Proposals shall be submitted in a sealed envelope and state "City of Tigard, Printing Services for City's Newsletter" in the lower left-hand corner. It is the contractor's responsibility to ensure that proposals are received prior to the stated closing time. The City shall not be responsible for the proper identification and handling of any proposals submitted incorrectly. Facsimile proposals shall not be accepted.
3. **PROPOSAL VALIDITY PERIOD:** All proposals submitted shall be binding for 30 calendar days following the opening date, unless extended by mutual consent of all parties.
4. **WITHDRAWAL OF PROPOSAL:** At any time prior to the date and hour set for the receipt of proposals, a vendor may withdraw his/her proposal. Withdrawal will not preclude the submission of another proposal prior to the hour and date set for the opening of the proposal.
5. **COMPLY:** Contractor shall comply with all the terms and conditions contained herein and which are hereby made a part of this contract.
6. **CONTACT:** Please contact Cathy Wheatley at (503) 639-4171 ext. 309 for questions regarding scope of work.
7. **SUBMISSION AND SIGNING OF PROPOSALS:** The submission and signing of a proposal shall indicate the intention of the firm to adhere to the provisions described in this RFP.
8. **COST OF PREPARING A PROPOSAL:** The RFP does not commit the City to paying any costs incurred by Proposer in the submission or presentation of a proposal, or in making the necessary studies for the preparation thereof.

VIII. GENERAL TERMS AND CONDITIONS

1. **TERM OF CONTRACT:** The term of this contract shall be for a period of one year and may be automatically renewed for up to four (4) additional twelve-month periods. The term of the contract including renewals cannot exceed five (5) years.

Renewal Process: If the City determines that it is in the City's best interest, the City may elect to extend the contract per the above mentioned time periods subject to the following conditions:

- a. Service has been determined by the City Recorder to be satisfactory.
- b. Fee schedule remains firm for the additional years; adjusted only for any escalation/de-escalation allowed under the terms of the contract.
- c. Contractor agrees in writing to extend the contract.

2. **FORM OF CONTRACT** A copy of the standard Personal Service contract which the City expects the successful firm or individual to execute, is included as "Attachment A". The contract will incorporate the terms and conditions from this RFP document and the successful proposer's response documents. Firms taking exception to any of the contract terms should indicate the same in their proposals or their exceptions will be deemed waived.

The successful proposer shall commence work only after the professional services contract with the City is fully executed and a purchase order has been issued.

3. **INTERPRETATIONS AND ADDENDA:** If necessary, interpretations or clarifications in response to questions will be made by issuance of an "Addendum" to all prospective Proposers within a reasonable time prior to proposal closing, but in no case less than 72 hours before the proposal closing. If an addendum is necessary after that time, the City, at its discretion, can extend the closing date.

Any Addendum issued, as a result of any change in the RFP, must be acknowledged by submitting the "Acknowledgment of Addendum" with proposal.

ONLY QUESTIONS ANSWERED BY FORMAL WRITTEN ADDENDA WILL BE BINDING.

Oral and other interpretations or clarifications will be without legal effect.

All other questions should be directed to Terry Muralt, Buyer (503) 639-4171, ext. 324.

4. **ERROR IN PROPOSALS:** When an error(s) is made in extending total prices, the unit proposal price will govern. Proposers are cautioned to recheck their proposal for possible error(s). Error(s) discovered after opening cannot be corrected and the contractor will be required to perform if their proposal is accepted.
5. **BUSINESS TAX:** Immediately following award, if not obtained before, Contractor shall pay the City of Tigard Business Tax and fill out a W9 Form provided to you by the City. The above shall be completed before contract is signed.
6. **BILLING REQUIREMENTS:** Invoices shall be sent to City of Tigard, Attn: Accounts Payable, 13125 SW Hall Blvd., Tigard, OR 97223. Payment is normally made within 30 days following the date the entire order is delivered or the date the invoice is received.
7. **INSURANCE:** Successful proposer(s) shall maintain insurance coverage of the types and in the amounts stated in Section No. 8 of the attached SAMPLE contract and such insurance must be in full force and effect throughout the term of this contract. Work shall not commence under this contract until contractor has obtained all the insurance required and submit a certificate of insurance to City

8. **REJECT ANY AND ALL PROPOSALS:** The City may reject any proposal not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any or all proposals upon a finding of the City that it is in the public interest to do so.
9. **TERMINATION:** Contract may be terminated by mutual consent of both parties or by the City at its discretion with a 30 days' written notice to cease using the services provided. If the contract is so terminated, Contractor shall be paid in accordance with the terms of the contract.
10. **PROJECT MANAGER:** The City's project manager shall be Cathy Wheatley, 503-639-4171 ext. 309.
11. **PROPOSAL REJECTION**

The City reserves the right:

- 1) To reject any or all proposals not in compliance with all public procedures and requirements;
- 2) To reject any proposal not meeting the specifications set forth herein;
- 3) To waive any or all irregularities in proposals submitted;
- 4) In the event two or more proposals shall be for the same amount for the same work, the City shall follow the provisions of LCRB 30.096;
- 5) To reject all proposals;
- 6) To award any or all parts of any proposal; and
- 7) To request references and other data to determine responsiveness.

City of Tigard
RFP – Printing Services for City Newsletter
Closes: September 21, 2001

PRICE SCHEDULE
(This form to be included in proposal)

1. Newsletter pricing with breakdown of different ink color requirements:

No. of Pages		Price for 1 color	Price for 2 colors	Price for 4 colors
8 page		\$ 2019.47	\$ 2352.95	\$ 3880.79
12 page		\$ 3522.79	\$ 4050.28	\$ 6453.67
16 page		\$ 3720.68	\$ 4463.34	\$ 8123.96

2. Photo pricing:

Printer to shoot in photos	Price \$ 27 each
----------------------------	------------------

Black + white photo

3. Printing and mailing deadline:

After printer receives artwork, can printer meet the 4 -day turnaround deadline for printing and mailing the newsletter?

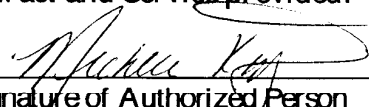
YES X NO _____

Comments: _____

If Printer is late in meeting the 4- day turnaround time, what discount if any would be given. _____

4. Company Information and Person Responsible for Contract and Service provided:

Precision Graphics
Company Name
9524 SW Tualatin Sherwood Rd.
Address
Tualatin, Oregon 97062
503-692-1000
Phone


Signature of Authorized Person

Person Responsible for Contract Work
9-20-1
Date
93-0851553
Federal ID No.

ACKNOWLEDGMENT OF ADDENDA

I HAVE RECEIVED THE FOLLOWING ADDENDA:

(If none received, write "None Received")

1. _____

3. _____

2. _____

4. _____

Date

Signature of Proposer

Title

Corporate Name

AGENDA ITEM # _____
FOR AGENDA OF October 9, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Award contract with Bretthauer Oil Company to provide fuel at captive sites and foreign sites through the use of commercial automated (key/card lock) fuel systems.

PREPARED BY: Terry L. Muralt, Buyer DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Shall Council award contract with Bretthauer Oil Company to provide fuel at captive sites and foreign sites through the use of commercial automated (key/card lock) fuel systems.

STAFF RECOMMENDATION

Award contract with Bretthauer Oil Company to provide fuel at captive sites and foreign sites through the use of commercial automated (key/card lock) fuel systems.

INFORMATION SUMMARY

On September 11, 2001 at 3:00 PM the City of Tigard completed a formal Request for Proposal process with Tualatin Valley Fire & Rescue for "Fueling at Captive Sites and Foreign Sites through the use of Commercial Automated (key/card lock) Fuel Systems and Fuel Drops". The "captive site" term means that the fuel in the City's 2,000 gallon in-ground tanks are monitored and automatically fueled by the fuel company when the level of fuel drops to a predetermined level. This assures that there is always available fuel for the City's fleet as well as Tualatin Valley Fire & Rescue fleet that is located next to the Water Building on Burnham Road. The "Foreign Sites" are fuel sites located around Washington County and Oregon as well as through out the United States that can be used for fueling City vehicles through the use of the key/card lock fuel system. This key/card lock fuel system allows monitoring of each purchase of fuel. It tracks which vehicle is being fueled, the date of fueling, driver name, odometer reading, amount of fuel purchased and cost of fuel at that time.

One bid was received from Bretthauer Oil Company and a "no bid" from Albina Fueling. Bretthauer Oil Company was the only qualified bidder because of specific requirements needed for both agencies in fueling emergency vehicles.

PRICING:

The pricing is based on a markup price per unit plus the site transfer price to equal the total cost per gallon on any given day. The cost of fuel will fluctuate with the market, but the markup price per unit shall remain firm for the duration of the contract.

Mark up pricing at Captive site shall be **.08 per gallon** for unleaded and premium grade gasoline and Diesel No. 2. Mark up pricing at Company owned and non-company owned (both within and outside service area) commercial fuel cardlock locations shall be **.05 per gallon.**

Pricing for emergency deliveries needed outside of normal hours of operation shall be **\$100 per delivery.**

Pricing for an emergency event where stand-by services is required shall be **\$80 per hour**.

OTHER ALTERNATIVES CONSIDERED

Reject bid and complete a new bid process.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

Copy of Purchase Agreement.

FISCAL NOTES

The budgeted funds for FY01-02 are \$137,352.00.

**CITY OF TIGARD, OREGON
PURCHASE AGREEMENT FOR**

**FUELING AT CAPTIVE SITES AND FORREIGN SITES THROUGH THE USE OF
COMMERCIAL AUTOMATED KEY/CARD LOCK FUEL SYSTEM**

THIS AGREEMENT made and entered into this **10th of October, 2001** by and between the CITY OF TIGARD, a municipal corporation of the State of Oregon, hereinafter called City, and **Bretthauer Oil Company** hereinafter called Seller.

RECITALS

- a. Seller has submitted a bid or proposal to City for the sale of certain goods.
- b. Seller is in the business of selling certain goods and is aware of the purposes for which City will use the goods.
- c. City and Seller wish to enter into a contract under which City shall purchase the goods described in Seller's bid or proposal.

AGREEMENT: The parties agree:

1. **GOODS TO BE PROVIDED:**

City shall purchase fuel at captive sites and foreign sites through the use of commercial automated key/card lock fuel systems from Seller in accordance with:

- a. The specifications (including any addenda) attached hereto as Exhibit A and incorporated herein by this reference;
- b. The Seller's proposal dated September 11, 2001, which was accepted by the Contract Review Board on October 9, 2001 attached hereto as Exhibit B and incorporated by this reference; and
- c. The City's Standard Terms and Conditions, attached hereto as Exhibit C and incorporated by this reference.

2. **EFFECTIVE DATE AND DURATION:**

This Agreement shall become effective upon the date of execution by the City's Local Contract Review Board and shall expire, unless otherwise terminated on **October 9, 2006**. All goods under this Agreement shall be delivered and completed prior to the expiration of this Agreement.

3. COMPENSATION:

a. City hereby agrees to pay Seller as follows:

Pricing is based on a markup price per unit plus the site transfer price to equal the total cost per gallon on any given day. The markup price per unit shall remain firm for the duration of the contract.

Mark up price at captive site shall be .08 per gallon for unleaded and premium grade gasoline and Diesel No. 2.

Mark up price at Company owned and non-company owned (both within and outside service area) commercial fuel card-lock locations shall be .05 per gallon.

Price for emergency deliveries needed outside of normal hours of operation shall be \$100 per delivery.

Cost for an emergency event where stand-by services is required shall be \$80 per hour.

The total purchase price shall be considered payment for all Sellers' obligations described in this agreement. Seller shall invoice City semi-monthly (the 15th and the last day of the month) for fuel used. City shall have thirty (30) days after receipt of invoice in which to make payment. Seller shall be responsible for the payment of all taxes associated with the sale of the goods. City is exempt from the payment of Federal Excise Tax.

- b. Seller shall promptly advise City of all reasonably available technological advances that are known or become known to Seller while this agreement is in effect which may result in the goods having added value, capacity, or usefulness when used for City's purpose. If Seller intends to provide goods incorporating technological advances and still meeting the specifications and the City's needs at no additional charge, Seller shall provide City with 30 days' notice of the proposed change. The City may require that only goods not incorporating the changes be supplied by providing written notice to seller within 5 days of receiving the notice of the proposed change. Any other changes incorporating technological advances shall only be approved as an amendment to this agreement.
- c. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. DELIVERY:

Seller shall monitor and maintain a minimum fuel inventory of 1,000 gallons at the captive site located at 8777 SW Burnham, Tigard, OR 97223. All other above ground tanks shall be monitored by the City and filled by Seller upon request by City. Seller agrees to provide goods as specified in Exhibit A.

No language contained in a purchase order, work order, or delivery order shall vary, amend, modify, or add terms or conditions to this Agreement under which the order is placed.

5. INSTALLATION:

Unless the Specifications (Exhibit A) or the proposal (Exhibit B) require installation by Seller, the City shall install the goods purchased under this agreement. If Seller is to install the goods, installation shall be completed no later than 5 days after initiation of agreement. Any installation by Seller shall be in accordance with the provision of this agreement, including all Exhibits.

8. ASSIGNMENT/DELEGATION:

Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other and any attempted assignment or transfer without the written consent of the other party shall be invalid.

9. SUBMITTING BILLS AND MAKING PAYMENTS.

All notices and bills shall be made in writing and may be given by personal delivery, mail or fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

CITY OF TIGARD

Accounts Payable
13125 SW Hall Blvd.
Tigard, Oregon 97223

Business Phone: 503-639-4171
Business Fax: 503-639-1471
Email Address: kathyk@ci.tigard.or.us

SELLER

Bretthauer Oil Company
PO Box 1299
Hillsboro, OR 97123

Business Phone: 503-648-2531
Business Fax: 503-640-4518
Email Address: www.bretthauer.com

10. TERMINATION

City has the right, in its sole discretion, to terminate without cause or for no cause, to termination this Agreement at any time by giving notice to Seller. If City terminates the contract pursuant to this section, it shall pay Seller for goods shipped by Seller prior to receipt by Seller of the notice of termination. City may deduct the amount of damages, if any, sustained by City due to any breach of contract or warranty by Seller. Damages for breach of contract or warranty shall be those allowed by Oregon law, reasonable and necessary attorney fees, witness fees (expert and non-expert), and other costs of litigation at trial and on appeal.

11. ACCESS TO RECORDS:

City shall have access to such books, documents, papers and records of Seller as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

12. FORCE MAJEURE:

Neither City nor Seller shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, natural disaster, war, civil unrest,

volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subseller or supplies due to such cause; provided that the parties so disabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

13. NON-DISCRIMINATION:

Seller agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Seller also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

14. WARRANTY AGAINST DEFECTS:

Seller warrants that the goods shall remain free of defects in material and workmanship for a period of one (1) year commencing the date of City's acceptance. Such defects shall include any failure of the goods to meet Seller's specifications or the description contained in Seller's product literature. If within the warranty period City discovers such a defect, Seller shall repair or replace the defective item or component free of charge. If after three attempts Seller is unable to eliminate a defect, or if Seller does not commence the warranty work within the time allowed in this paragraph, City shall have the right to return the defective item or component and, at City's option, either obtain a full refund of the purchase price of the goods or obtain a refund, in an amount to be agreed upon by the parties, of the portion of the purchase price of the goods that is allocable to the defective item or component. Seller shall commence all warranty work within 48 hours of receiving notice of the warranty claim. All warranty work shall be performed at City's facilities unless otherwise agreed by the parties. If warranty work is performed at Seller's facilities, Seller shall pay all shipping costs, including the cost of return shipment. This warranty shall apply to all repair parts furnished by Seller and all repairs performed by Seller.

15. INTELLECTUAL PROPERTY WARRANTY:

Seller warrants that none of the goods, the use thereof or any of the applications, processes or designs employed in the manufacture thereof infringes the valid claims of any letter patent, patent application, copyright, trade secret or any other property right of any third party. If as a result of any suit or proceeding alleging an infringement of any of the foregoing property rights City's use of the equipment is enjoined, Seller shall at no cost to City either obtain for City a license to use the goods or modify the goods so as to avoid the infringement without any degradation in performance. If Seller cannot obtain such a license and cannot so modify the equipment, Seller shall promptly refund to City the purchase price, less a reasonable amount for depreciation.

16. MAINTENANCE SERVICES:

Unless otherwise provided in the Specifications (Exhibit A) or the Proposal (Exhibit B), the City shall have the right to maintain the fuel pumps located at the captive site 8777 SW Burnham St, Tigard, OR 97223. Repairs or replacement of parts by the City or its agents or maintenance contractors shall not alter or void any warranties for equipment or goods purchased under this contract.

Seller shall provide maintenance services and updates for the fuel automated key/card lock software, which is owned by Seller.

17. ASSIGNMENT OF MANUFACTURER'S WARRANTIES:

Seller hereby assigns all warranties of the manufacturers of components of the goods to City to the extent such warranties are assignable. In the event Seller must obtain the consent of the manufacturer or take other action before any such warranties are assignable, Seller shall do so prior to delivery.

18. INDEMNITY/HOLD HARMLESS:

Seller shall defend, indemnify and hold harmless City, City's officers, employees, agents and representatives from and against all liability, claims, demands, judgments, penalties, and causes of action of any kind or character, or other costs or expenses incidental to the investigation and defense thereof, of whatever nature, resulting from or arising out of the activities of the Seller or its subsellers, agents, or employees under this contract, except, however, that the foregoing shall not apply to liability that arises out of City's negligence.

19. INSURANCE:

Commercial General Liability Insurance: If Seller will be installing or testing the goods, or otherwise performing services on City's premises, Seller shall provide a certificate indicating that Seller has commercial general liability insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance. Coverage will include \$1,000,000 per occurrence and \$2,000,000 general annual aggregate. Said insurance shall name City as an additional insured and shall require written notice to City thirty (30) days prior to cancellation. If Seller hires a subseller to perform services on City's premises, Seller shall ensure that Seller's subseller complies with this paragraph.

Business Automobile Liability Insurance: If Seller will be delivering the goods, Seller shall provide City a certificate indicating that Seller has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000. Said insurance shall name City as an additional insured and shall require written notice to City thirty (30) days in advance of cancellation. If Seller hires a carrier to make delivery, Seller shall ensure that said carrier complies with this paragraph.

Workers' Compensation Insurance: The Seller, its subsellers, if any, and all employers providing work, labor or materials under this Contract that are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Sellers who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

Certificates of Insurance: As evidence of the insurance coverage required by the contract, the Seller shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract.

20. ATTORNEY'S FEES:

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including witness fees (expert and non-expert), attorney's fees and court costs on appeal.

21. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES

Seller shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subsellers and income tax withholding contained in ORS Chapter 279, the provisions of which are hereby made a part of this agreement.

22. CONFLICT BETWEEN TERMS:

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the terms of proposal conflicting herewith.

23. SEVERABILITY:

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

24. COMPLETE AGREEMENT:

This Agreement, including the exhibits, is intended both as a final expression of the Agreement between the parties and as a complete and exclusive statement of the terms. In the event of an inconsistency between a provision in the main body of the Agreement and a provision in the Exhibit, the provision in the main body of the Agreement shall control. In the event of an inconsistency between Exhibit A and any other exhibit, Exhibit A shall control. In the event of an inconsistency between Exhibit C and Exhibit B, Exhibit B shall control. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Seller, by the signature of its authorized representative, hereby acknowledges that Seller has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Seller has executed this Agreement on the date hereinabove first written.

CITY OF TIGARD

Approved by Tigard's Local Contract Review Board on: _____

By: Authorized City staff person letting contract

Date

SELLER

By: Company Name

Print Name & Title of Authorized Representative

Sign Name

Date

EXHIBIT 'A'

GOODS TO BE PROVIDED

SECTION TWO

TECHNICAL SPECIFICATIONS AND REQUIREMENTS

A. INTRODUCTION:

The purpose for this "Request for Proposal" (RFP) is to supply Tualatin Valley Fire and Rescue (TVF&R), City of Tigard (the City) and other possible public agencies with a fueling source for underground and above ground tanks (fuel drops) and through a commercially automated (key/card-lock) fueling system which shall include "captive sites." This proposal process is a joint effort by TVF&R and the City. It is the intent of both agencies to award the contract to one (1) primary contractor, who shall be responsible for providing the goods and services described herein, but if it is in the best interest to award to multiple contractors, TVF&R and the City reserves the right to do so.

Proposals may also be considered from cooperative arrangements of private contractors where the group is represented by a primary contractor, who would be responsible to conduct all business with TVF&R and/or the City.

B. SCOPE OF WORK:

Please note that the following information are annual estimates only for TVF&R and the City. TVF&R and the City are not committing to buy this quantity of fuel, but are using it as a basis for a vendor to know the estimated usage and for evaluation of this proposal. Proposals shall include a list of available foreign sites for automated key/cardlock locations and be within a 2-mile radius of stations listed on page 10, C.14.:

	TVF&R	City of Tigard
Vehicles:		
Diesel	83	20
Unleaded	96	115
Total Vehicles	<u>179</u>	<u>135</u>
Current Cardlock Cards:		
Pacific Pride		
Diesel	68	30
Unleaded	84	
Super unleaded	3	
All product	55	130
Driver cards		152
CFN		
Diesel	20	
Unleaded	4	
All product	13	
Total Cards	<u>247</u>	<u>312</u>

	TVF&R	City of Tigard
Est. Annual Fuel Usage in Gallons:		
Cardlock Fuel:		
Diesel		
Captive Site	20,469	12,673
Comm. Cardlock	45,544	
Unleaded	20,684	1,705
Mid Unleaded	479	189
Super Unleaded		
Captive Site	14,512	67,711
Comm. Cardlock	3,090	5,073
Fuel Drops:		
Diesel	26,502	
Diesel, Offroad	764	
Unleaded	479	
Total Annual Estimated Gallons	132,523	87,351

Est. Annual Fuel Usage by Cardlock Location in Gallons:

Captive Site:		
Tigard		
Diesel	11,343	12,673
Super Unleaded	645	67,711
Aloha		
Diesel	9,126	
Super Unleaded	13,867	
Commercial Cardlock:		
Beaverton		
Diesel	20,867	
Super Unleaded	1,760	
Unleaded	5,726	
Tigard		
Diesel	1,663	
Super Unleaded	182	5,053
Unleaded	2,662	1,627
Mid Unleaded	249	168
Wilsonville		
Diesel	10,294	
Super Unleaded	92	
Unleaded	4,203	
Mid Unleaded	188	
Tualatin		
Diesel	4,004	
Unleaded	1,780	

	TVF&R	City of Tigard
Oregon City		
Diesel	8,512	
Super Unleaded	965	
Unleaded	4,161	
Other Miscellaneous Cardlocks		
Diesel	204	
Super Unleaded	91	20
Unleaded	2,152	78
Mid Unleaded	42	28
	<hr/>	<hr/>
Total Estimated Fuel From Cardlock	104,778	87,351

C. CONTRACTOR'S RESPONSIBILITIES:

- Contractor Contacts:** Contractor shall designate one (1) primary and one (1) backup person responsible for the Contractor's work under this contract. Contractor shall provide to TVF&R and the City the names, addresses and telephone numbers, including after hours/emergency numbers of such persons and shall keep this information current with TVF&R and the City Contract Administrators at all times. Each Proposer shall provide resumes for all key staff responsible for this contract.
- Prices and Terms:** The Contractor represents that all prices, terms and benefits offered by the Contractor in this agreement are equal to or better than the equivalent prices, terms and benefits being offered by the Contractor to any other federal, state, or local government. If the Contractor during the term of the agreement with TVF&R or the City, enters into any contract, agreement or arrangement that provides lower prices, more favorable terms or greater benefits, to any other government body, the contract with TVF&R or the City shall be deemed amended to provide the same price or prices, terms and benefits. This provision applies to all comparable products, supplies and services provided by the Contractor.
- State and Federal Tax Exemption:** The Contractor shall process all the forms necessary for the state and federal fuel exemption claims (if applicable). No additional charges will be allowed for exemption processing or tax withholding requirements.
- Material Safety Data Sheets:** At time of contract signing by the Contractor, Material Safety Data Sheets (MSDS) for each product shall be provided by the Contractor and made part of this contract and as new or updated MSDS become available, the Contractor shall forward copies to be placed on file meeting the requirement of OAR 437-155-25.
- OSHA Requirements:** The contractor shall comply with conditions of the Federal Occupational Safety and Health Act of 1972 (OSHA), and the standards and regulations issued there under, and certify that all items furnished and purchased under this order conform to and comply with said standards and regulations. The Contractor further agrees to indemnify and hold harmless each purchaser from all damages assessed a purchaser as a result of the Contractor's failure to comply with the acts and standards there under and for the failure of the items furnished under this order to so comply.

6. **Training:** The Contractor shall provide training materials for TVF&R and City personnel in the proper dispensing of flammable liquids and fire safety training in accordance with OAR 837-020-055. The Contractor shall comply with the current and future regulations in this area.
7. **Instruction, Service and Site Information:** The Contractor shall supply to each department for TVF&R and the City, promptly upon phase-in and within five (5) working days after request, at no charge:
 - a. Written instructions for using the key/card-lock system.
 - b. Notice of change in availability of services.
 - c. Notice of any addition or deletion to site changes.
8. **Hours of Operation and Problem Notification:**
 - a. Key/card-lock sites shall be accessible 24 hours a day, 365 days a year (or 366 days in a leap year).
 - b. Telephone system to notify main business office of a problem at the fuel site.
9. **Emergency Power Backup Fuel Supply:** In case of an emergency power outage, the Contractor shall have 24-hour on-call emergency power for on-location fueling at fuel locations agreed upon by the Contractor, TVF&R and the City. The locations given below shall be equipped with portable generator adapters or have certified internal back-up power system for operation during an emergency power outage to support emergency back-up fuel supply. Charges for fuel shall be the same as normal fuel card-lock usage.

The designated fuel locations to be considered for emergency backup power shall be in the general vicinity of these locations and agreed upon with TVF&R and the City:

- a. The Beaverton area
- b. The Tualatin-Tigard area
- c. Wilsonville-West Linn area.

The Contractor shall provide personnel to operate and maintain the emergency back-up power at the designated locations.

The actual hours of operation and response times shall be dependent on the demands and needs of any particular emergency. Hours of operations can range from a 24-hour per day requirement to pre-determined hours of operation as established by TVF&R and the City. Actual hours of operation shall be coordinated with the contract administrator for the particular emergency.

The Contractor shall be required to establish and maintain a 24-hour per day continuously operational communication notification system to respond to this requirement.

10. **Environmental Conditions:** Regarding commercial automated fuel (key/cardlock) sites, each site shall be well lit, clean and be in an open area as to provide a safe environment for 24-hour use. All approved sites shall have functional fire extinguishers (that meet state and/or local Fire Marshal requirements), and shall have posted emergency telephone numbers for use in case of problems, and shall provide locally owned pay telephones and/or emergency telephones.

11. **Spillage and Cleanup:** The Contractor shall be responsible for all spillage, which may occur during transit and unloading operations for both fuel drops and captive site fueling. The Contractor shall immediately report any spillage to the Contract Administrator for that site and clean up the spillage according to applicable EPA and State guidelines and requirements. Failure to do so will initiate corrective action and back charge to the Contractor of any incurred costs.
12. **Fuels:** The Contractor shall have a currently functional automated key/card-lock system for purchase of gasoline and diesel fuels meeting the following requirements:
- a. All motor fuels shall be free from impurities including, but not limited to water, dirt, harmful oils, fibrous materials, and other petroleum products or contaminants.
 - b. In case of damage directly traceable to the contaminated motor fuel at a site, the Contractor shall be responsible for the damage costs.
 - c. Fuel storage tanks shall comply with current and future Federal and State Regulations as implemented.
 - d. All fuels shall comply with applicable industry and government standards and specifications.
 - e. Regular unleaded gasoline shall have a minimum octane rating of 87.
 - f. Medium duty unleaded gasoline shall have a minimum octane rating of 89.
 - g. Super-unleaded gasoline shall have a minimum octane rating of 91.
 - h. Diesel fuel shall be (on road) #2. Diesel fuel shall be winterized to industrial standards for the area.

Note: Each commercial fuel site shall include one (1) unleaded fuel of the higher octane rating fuels (89 or 91) along with the regular unleaded and (on- road) diesel fuel.

13. **Fuel Availability:** The Contractor shall maintain supplies of regular unleaded gasoline, super unleaded, both on-road and off-road diesel to meet fuel requirements for TVF&R and the City on a 24-hour per day and 365 days per year (or 366 days in a leap year), during adverse weather conditions, National and State (Civil Defense) emergencies and fuel shortages.

The Contractor must be able to provide both gas and/or diesel fuel anywhere in TVF&R's and City's jurisdiction with a minimum 2-hour response time. The Contractor is required to provide an emergency response contact number that is available 24-hours and 365 days per year (or 366 days in a leap year). **If the contractor charges an additional fee for this, it must be stated in the contractor's prices submitted in this RFP.**

The minimum fuel inventory required at the captive sites shall be no less than 1,000 gallons. Contractor shall monitor all fuel inventories at captive sites on a daily basis. Please state how you monitor fuel usage.

14. **Fuel Site Locations:** Proposer shall provide a list of commercial fuel sites and the locations available. Below is a list of fuel locations of TVF&R and the City.

a. **Fuel drop locations:**

1.) **Above ground on-road diesel tanks:**

Sherwood Station (33), 655 NE Oregon, Sherwood with 550 gallons

Cornell Road Station (60), 8585 NW Johnson St., Portland with 550 gallons

Somerset Station (64), 3355 NW 185th, Portland with 550 gallons

- Brockman Road Station (66), 13900 SW Brockman Rd., Beaverton with 550 gal.
- Cooper Mountain Station (69), 9940 SW 175th, Aloha with 550 gallons
- Hill Top Station (50), 19340 SW Molalla Ave., Oregon City with 700 gallons.
- 2.) **Above ground unleaded fuel tank:**
Hill Top Station (50), 19340 SW Molalla Ave., Oregon City with 300 gallons
- 3.) **Underground off road diesel tank:**
Tigard Police Department, 13125 SW Hall St., Tigard with 500 gallons.
- 4.) **Above ground off road diesel generator tanks:**
Tigard Water Building, 8777 SW Burnham St., Tigard with 250 gallons
Canterbury Reservoir, 10490 SW Canterbury Lane, Tigard with 250 gallons
Tigard Gaarde Reservoir, 10201 SW 119th Place, Tigard with 500 gallons
Tigard, High Tor Reservoir, 14255 SW High Tor Drive, Tigard with 500 gallons
Regional Training Center, 12400 SW Tonquin Rd., Sherwood with 250 gal.
Administration Center, 20665 SW Blanton St., Aloha with 175 gallons
Wilsonville Station (52), 29875 SW Kinsman, Wilsonville with 175 gallons
Progress Station (53), 8480 SW Scholls Ferry Road, Beaverton with 175 gal.
Elligsen Road Station (56), 8455 SW Elligsen Rd., Wilsonville with 275 gal.
Aloha Station (62), 3608 SW 209th, Aloha with 175 gallons
Somerset Station (64), 3355 NW 185th, Portland with 175 gallons
Brockman Road Station (66), 13900 NW Brockman Rd., Beaverton with 165 gal.
Cooper Mountain Station (69), 9940 SW 175th, Aloha with 175 gallons

- b. **Captive Sites:** These are currently tied into the Pacific Pride system with fuel billed as it is used. Any costs to change the existing software/hardware at captive sites shall be the responsibility of the vendor.
 - 1.) Two underground tanks located at City of Tigard Water Bldg., 8777 SW Burnham St., Tigard, with 2,000 gallons gasoline and 2,000 gallons diesel.
 - 2.) Two above ground tanks located at Aloha Station (62), 3608 SW 209th, Aloha, with 2,000 gallons gasoline and 2,000 gallons diesel.

***Note:** The Aloha Station captive site is also utilized occasionally by other outside agencies including Washington County Community Action Organization, Hillsboro Fire Department and Washington County Sheriffs Office with the vendor billing these outside agencies separately. TVF&R's permission is required for these agencies to utilize this site. Proposing vendors shall be required to get TVF&R's approval for outside agencies to use this site that currently has 24-hour access.*

- c. **Commercial Automated (Key/Cardlock) Systems.** Contractor shall supply the closest address of their commercial key/cardlock fuel system that these locations listed below will fill up at. Fuel sites shall be within a 2-mile radius of these locations:
Sherwood Station (33), 755 NE Oregon, Sherwood for unleaded fuel only.
Tualatin Station (34), 19365 SW 90th Court, Tualatin for diesel #2 and unleaded fuel.
King City Station (35), 17135 SW Pacific Hwy., Tigard for diesel #2 and unleaded fuel.
Wilsonville Station (52), 29875 SW Kinsman, Wilsonville for diesel # 2 and unleaded fuel.
City of Tigard, 13125 SW Hall Blvd., Tigard for diesel #2, regular and super unleaded fuel.

- 15. **Key/Card-Lock Device:** Contractor shall provide the Contract Administrator with the required number of key/card-lock devices for dispensing motor fuels. The key/card-lock system and devices shall have individually unique characteristics to provide maximum security measures to protect our

agencies from fraud. **There shall be two types of systems, one being a single key or card and the other being a dual card system.** Each system shall have a code ID to identify the driver fueling and the vehicle. Upon receiving a request from the Contract Administrator, the contractor shall provide the key/card devices within 3 working days. **Each proposer shall supply samples of the forms used to issue the key/card devices.** There shall be no charges for the issuance of key/card devices.

16. **Key/Card-Lock Invalidation:** Contractor shall have in place a system that will receive and respond to an invalidation notification within eight (8) hours. Notification of a misplaced or stolen key/card device shall be provided immediately to the Contractor by each user of the misplaced or stolen key or card that requires deactivation. **Literature shall be provided by each proposer explaining its invalidation notification methods and procedures. A sample of this literature shall be provided with the proposal.**

Proposer shall be required to be insured to cover all unauthorized transactions due to theft or loss of a card.

17. **Key/Card Lock Device Invalidation Liability:** The Contractor shall be responsible for purchases at any of its key/card lock sites after eight (8) hours has expired following notification of invalidation. The public agencies covered by this agreement shall be responsible for purchases in the first 8 hours up to \$50.00 after verbal notification of invalidation. **Each proposer shall describe additional dollar limitations (if any) available in regard to agency liability.**

Additional dollar limitations: In consideration of additional specific dollar limitations, TVF&R and the City agree:

- Not to place applicable security codes on key/card devices; and
- To cooperate with Contractor in identifying the person(s) responsible for charges in excess of the agreed upon dollar limitations.

18. **Valid Vehicles:** Purchase charges for valid vehicles shall be paid by the agency. Any charge not corresponding to a valid vehicle shall be deducted from the billing and the Contractor shall be notified.
19. **Cardlock Systems Cards and Information:** Contractor shall provide the necessary card(s) for initial and follow-up issue. Upon receiving a request for additional card(s), the contractor shall provide the additional card(s) within 3 working days of the request. Printed instruction, information sheets, on-location instructions, and fuel location maps shall be provided for each card when requested, updated and/or changed at no charge. Replacement cards will be provided at no cost to TVF&R or the City.
20. **Billing Report/Summary Statement:** The Contractor shall provide a semimonthly (the 15th and the last day of the month) summary statement to each public agency, within five (5) business days of the end of each billing cycle. All reports shall include fuel price charge, number of gallons, type of fuel, vehicle ID or license number, odometer reading, person name or ID number making purchase, site, date and total volume of all fuel types.

Contractor must be capable of transmitting billings electronically to each agency in an ASCII format (".txt" file) that is in comma delimited format and is readable by TVF&R's and City's vehicle

information management system. Proposal shall include sample billing reports, and a report on 3.5" floppy disk or CD-ROM for comparison and compatibility to existing software. Proposer shall provide 2 disks, one for each agency.

Summary statements must include identification of each department/agency and the charges per department/agency. Summary reports shall be sent to Accounts Payable, TVF&R, 20665 SW Blanton Street, Aloha, OR 97007 for TVF&R purchases. City statements shall be sent to Accounts Payable, City of Tigard, 13125 SW Hall Blvd. Tigard, OR 97223.

21. **References:** Each proposer shall submit a list of three (3) current customers (priority given to other government customers) using existing fuel sites in Washington County, Multnomah County or Clackamas County. The list must include name of City, County, and/or State Agency; or if private, company name, contact person and telephone number.
22. **Qualifications:** Responding firms shall provide sufficient information to demonstrate the firm's qualifications to meet the requirements in this RFP. Proposer shall provide a list of previous experience and performance on projects of similar scope and size as well as vendor's qualifications and experience of personnel.
23. **Pricing:**
 - a. The price per gallon shall be the proposer's mark-up cost over transfer price per gallon. TVF&R and the City will pay only a price per gallon.
 - b. Markup cost shall include all of the proposer's costs over the transfer price of fuel. For example, but not limited to:
 - per transaction cost
 - costs associated with initial setup and distribution of cards
 - costs for additional cards
 - accounting fees
 - emergency power requirement costs.
 - c. Markup cost shall not include wholesale purchase price or applicable taxes.
 - d. No finance charges shall be charged for payments made within 60 days of the billing date.
 - e. TVF&R and the City understands that the Contractor's price is based on the site transfer price, which varies at different sites, reflecting variations in transport cost and site expenses. TVF&R and the City also understands that the site transfer price is based rack averages for that market, and that the price will vary over time depending on fluctuations in rack prices. The contractor will base its price to TVF&R and the City on the site transfer price plus the quoted mark-up cents per gallon.
 - f. Sample Pricing. For the purpose of determining the cost to TVF&R and to the City, the Contractor will base its price to TVF&R and the City on the site transfer price plus the quoted mark-up cents per gallon.
24. **Alternate Service:** TVF&R and the City reserves the right to contract with another key/card-lock vendor, whenever service cannot be performed by the contractor within a 5-mile radius of a need.

ADDENDUM #1
REQUEST FOR PROPOSAL
FOR
FUELING AT CAPTIVE SITES AND FOREIGN SITES THROUGH
THE USE OF COMMERCIAL AUTOMATED (KEY/CARD-LOCK)
FUEL SYSTEMS AND FUEL DROPS

Proposal by Tualatin Valley Fire & Rescue and City of Tigard

Date: August 28, 2001

Section Two, C. 24. **Alternate Service** should read as follows: TVF&R and the City reserves the right to contract with another key/card-lock vendor, whenever service cannot be performed by the contractor within a **2-mile** radius of a need.

ADDENDUM #2
REQUEST FOR PROPOSAL
FOR
FUELING AT CAPTIVE SITES AND FOREIGN SITES THROUGH
THE USE OF COMMERCIAL AUTOMATED (KEY/CARD-LOCK)
FUEL SYSTEMS AND FUEL DROPS

Proposal by Tualatin Valley Fire & Rescue and City of Tigard

Date: September 7, 2001

Section Two, C. 9. Emergency Power Backup Fuel Supply: **Additional wording

A mobile fueling system may also be used as an acceptable means of providing emergency backup to the designated fuel locations as long as at least 3 mobile fueling systems are available for TVF&R and the City's use in the case of an emergency.

Section Two, C. 14. b. Captive Sites 2.): **Correction on number of gallons

2.) Two above ground tanks located at Aloha Station (62), 3608 SW 209th, Aloha, with 1,000 gallons gasoline and 1,000 gallons diesel.

EXHIBIT 'B'

SELLER'S PROPOSAL

Tualatin Valley Fire & Rescue
& City of Tigard

Fuel Proposal

Due Date September 11, 2001

Bretthauer Oil Company

*Fueling at Captive Sites and Foreign Sites
through the use of Commercial Automated
(Key/Card-lock) Fuel Systems and Fuel Drops*

Technical Specifications and Requirements

Scope of Work

List of available foreign sites for automated key/Cardlock locations within a 2-mile radius of stations listed on page 10, C.14 of RFP:

a. Fuel drop locations:

1.) Above ground on-road diesel tanks:

Sherwood Station (33), 655 NE Oregon, Sherwood with 550 gallons

Cornell Road Station (60), 8585 NW Johnson St., Portland with 550 gallons

Somerset Station (64), 3355 NW 185th, Portland with 550 gallons

Brockman Road Station (66), 13900 SW Brockman Rd., Beaverton with 550 gallons

Cooper Mountain Station (69), 9940 SW 175th, Aloha with 550 gallons

Hill Top Station (50), 19340 SW Molalla Ave., Oregon City with 700 gallons

2.) Above ground unleaded fuel tank

Hill Top Station (50), 19340 SW Molalla Ave., Oregon City with 300 gallons

3.) Underground off road diesel tank

Tigard Police Department, 13125 SW Hall St., Tigard with 500 gallons

4.) Above ground off road diesel generator tanks:

Tigard Water Building, 8777 SW Burnham St., Tigard with 250 gallons

Canterbury Reservoir, 10490 SW Canterbury Lane, Tigard with 250 gallons

Tigard Gaarde Reservoir, 10201 SW 119th Place, Tigard with 500 gallons

Tigard, High Tor Reservoir, 14255 SW High Tor Drive, Tigard with 500 gallons

Regional Training Center, 12400 SW Tonquin Rd., Sherwood with 250 gallons

Administration Center, 20665 SW Blanton St., Aloha with 175 gallons
Wilsonville Station (52), 29875 SW Kinsman, Wilsonville with 175 gallons
Progress Station (53), 8480 SW Scholls Ferry Road, Beaverton with 175 gallons
Elligsen Road Station (56), 8455 SW Elligsen Rd., Wilsonville with 275 gallons
Aloha Station (62), 3608 SW 209th, Aloha with 175 gallons
Somerset Station (64), 3355 NW 185th, Portland with 175 gallons
Brockman Road Station (66), 13900 NW Brockman Rd., Beaverton with 165 gals
Cooper Mountain Station (69), 9940 SW 175th, Aloha with 175 gallons

- b. **Captive Sites:** These are currently tied into the Pacific Pride system with fuel billed as it is used. Any costs to change the existing software/hardware at captive sites shall be the responsibility of the vendor.
- 1.) Two underground tanks located at City of Tigard Water Bldg., 8777 SW Burnham St., Tigard, with 2,000 gallons gasoline and 2,000 gallons diesel.
 - 2.) Two above ground tanks located at Aloha Station (62), 3608 SW 209th, Aloha, with 1,000 gallons gasoline and 1,000 gallons diesel (as per Addendum #2)
- c. **Commercial Automated (Key/Cardlock) Systems:** Contractor shall supply the closest address of their commercial key/Cardlock fuel system that these locations listed below will fill up at. Fuel sites shall be within a 2-mile radius of these locations:
- 1) Sherwood Station (33), 755 NE Oregon, Sherwood for unleaded fuel only: *Bretthauer Oil Company has no site within a 2-mile radius of this location. However, we have enclosed a map of nearest Pacific Pride location to this station. Please see Attachment 2.B.14.A for Pacific Pride Fueling Site Details.*
 - 2) Tualatin Station (34), 19365 SW 90th Court, Tualatin for diesel #2 and unleaded fuel: *Bretthauer Oil Company has no site within a 2-mile radius of this location. However, we have enclosed a map of nearest Pacific Pride location to this station. Please see Attachment 2.B.14.A for Pacific Pride Fueling Site Details.*
 - 3) King City Station (35), 17135 SW Pacific Hwy., Tigard for diesel #2 and unleaded fuel: *Bretthauer Oil Company has an available foreign site at 15055 SW 72nd Avenue, Tigard that is within a 2-mile radius of this location. Please see Attachment 2.B.14.A for Pacific Pride Fueling Site Details.*
 - 4) Wilsonville Station (52), 29875 SW Kinsman, Wilsonville for diesel #2 and unleaded fuel: *Bretthauer Oil Company has an available foreign site at 28855 SW Boones Ferry Road, Wilsonville that is within a 2-mile radius of this location. Please see Attachment 2.B.14.A for Pacific Pride Fueling Site Details.*

- 5) City of Tigard, 13125 SW Hall Blvd., Tigard for diesel #2, regular and super unleaded fuel:
Bretthauer Oil Company has an available foreign site at 15055 SW 72nd Avenue, Tigard that is within a 2-mile radius of this location. Please see Attachment 2.B.14.A for Pacific Pride Fueling Site Details

Technical Specifications and Requirements (continued)

Contractor's Responsibilities

- 1) **Contractor Contacts:** Bretthauer Oil Company's primary contact for purposes of the work under this contract is *Kurt Albee, Sales Manager*. The backup contact for purposes of the work under this contract is *Eileen Dolan, Vice President of Sales & Marketing*. Bretthauer Oil Company operates with a Team concept. Kurt and Eileen will ensure customer needs are satisfied by Bretthauer Oil Company's team. In after hours/emergency situations, Bretthauer Oil Company has a 24-hour answering service that will contact the appropriate staff to respond to the requirements of this contract. After hour emergency number is (503) 648-2531. Below is a list of key staff responsible for the work under this contract:

<u>Employee Name</u>	<u>Title</u>	<u>Phone number/Pager</u>
<i>Kurt Albee</i>	<i>Sales Manager</i>	<i>(503) 615-3362 / (503) 239-2433</i>
<i>Eileen Dolan</i>	<i>Vice President of Sales & Distribution</i>	<i>(503) 615-3361 / (503) 731-2602</i>
<i>Kathy Zurfluh</i>	<i>Billing & Cardlock Services Manager</i>	<i>(503) 615-3365</i>
<i>Aron Balm</i>	<i>Dispatch & Route Supervisor</i>	<i>(503) 693-6776</i>
<i>Jim Mann</i>	<i>Dispatch & Lube/Fleet Supervisor</i>	<i>(503) 693-6776 / (503) 441-5009</i>
<i>Norm Baker</i>	<i>Operations Manager</i>	<i>(503) 615-3370 / (503) 313-7905</i>
<i>Michell Hay</i>	<i>Vice President of Finance</i>	<i>(503) 615-3369</i>

Please see attached résumé's (Attachment 2.C.1.A) for each employee listed above.

- 2) **Prices and Terms:** Bretthauer Oil Company represents that all prices, terms and benefits offered by Bretthauer Oil Company in this agreement are equal to or better than the equivalent prices, terms and benefits being offered by Bretthauer Oil Company to any other federal, state, or local government. If Bretthauer Oil Company, during the term of the agreement with TVF&R or the City, enters into any contract, agreement or arrangement that provides lower prices, more favorable terms or greater benefits, to any other government body, the contract with TVF&R or the City shall be deemed amended to provide the same price or prices, terms and benefits. This provision applies to all comparable products, supplies and services provided by Bretthauer Oil Company.

- 3) **State and Federal Tax Exemption:** Bretthauer Oil Company shall process all the forms necessary for the state and federal fuel exemption claims (if applicable). No additional charges will be allowed for exemption processing or tax withholding requirements. (Please see Attachment 2.C.3.A).
- 4) **Material Safety Data Sheets:** At time of contract signing by Bretthauer Oil Company, Material Safety Data Sheets (MSDS) for each product shall be provided by Bretthauer Oil Company and made part of this contract and as new or updated MSDS become available, Bretthauer Oil Company shall forward copies to be placed on file meeting the requirements of OAR 437-155-25.
- 5) **OSHA Requirements:** Bretthauer Oil Company shall comply with conditions of the Federal Occupational Safety and Health Act of 1972 (OSHA), and the standards and regulations issued there under, and certify that all items furnished and purchased under this order conform to and comply with said standards and regulations. Bretthauer Oil Company further agrees to indemnify and hold harmless each purchaser from all damages assessed a purchaser as a result of Bretthauer Oil Company's failure to comply with the acts and standards there under and for the failure of the items furnished under this order to so comply.
- 6) **Training:** Bretthauer Oil Company shall provide training materials for TVF&R and City personnel in the proper dispensing of flammable liquids and fire safety training in accordance with OAR 837-020-055. Bretthauer Oil Company shall comply with the current and future regulations in this area. *Bretthauer Oil Company complies with the training requirements by providing initial fire safety training tests each time a new account is opened and by providing an annual mailing of fire safety training tests. Bretthauer Oil Company also provides a fire safety training in the form of a power point presentation, which is available upon request.*
- 7) **Instruction, Service and Site Information:** Bretthauer Oil Company will supply to each department for TVF&R and the City, promptly upon phase-in and within five (5) working days after request, at no charge:
 - a. Written instructions for using the key/card-lock system *(please see attached Attachment 2.C.7.A)*
 - b. Notice of change in availability of services *(please see attached Attachment 2.C.7.B)*
 - c. Notice of any addition or deletion to site changes *(please see attached Attachment 2.C.7.C)*
- 8) **Hours of Operation and Problem Notification:**
 - a. Key/card-lock sites shall be accessible 24 hours a day, 365 days a year (or 366 in a leap year). *All Pacific Pride Network commercial automated cardlocks are open 24 hours per day, 365 days per year (366 in cases of leap years).*

b. Telephone system to notify main business office of a problem at the fuel site: *It is a requirement of the Pacific Pride network that all commercial automated cardlocks have a pay phone located on the premise.*

- 9) **Emergency Power Backup Fuel Supply:** In case of an emergency power outage, the Contractor shall have 24-hour on-call emergency power for on-location fueling at fuel locations agreed upon by the Contractor, TVF&R and the City. The locations given below shall be equipped with portable generator adapters or have certified internal back-up power system for operation during an emergency power outage to support emergency back-up fuel supply. Charges for fuel shall be the same as normal fuel card-lock usage.

The designated fuel locations to be considered for emergency backup power shall be in the general vicinity of these locations and agreed upon with TVF&R and the City:

- a. The Beaverton Area
- b. The Tualatin-Tigard Area
- c. The Wilsonville-West Linn Area

The Contractor shall provide personnel to operate and maintain the emergency back-up power at the designated locations: *As per Addendum #2, Bretthauer Oil Company has 4 tank trucks that are equipped with mobile fleet fueling systems. These mobile fleet fueling systems will be dispatched to any/all of the locations listed above in the event of an emergency power outage when notified by TVF&R and/or City of Tigard. Additionally, Bretthauer Oil Company operates a Pacific Pride automated commercial Cardlock at the Hillsboro Washington Street location that is equipped with a fully operational generator to power Cardlock fueling station in the event of power outage.*

The actual hours of operation and response times shall be dependent on the demands and needs of any particular emergency. Hours of operations can range from a 24-hour per day requirement to predetermined hours of operation as established by TVF&R and the City. Actual hours of operation shall be coordinated with the contract administrator for the particular emergency.

The Contractor shall be required to establish a 24-hour per day continuously operational communication notification system to respond to this requirement. *Bretthauer Oil Company already has in place a 24-hour per day continuously operational communication notification system to satisfy this requirement. By simply calling our main phone line, during or after hours of normal operation, (503) 648-2531, the appropriate member of Bretthauer Oil Company's staff will be notified to respond to the requirements of this contract concerning emergency power backup fuel supply.*

- 10) **Environmental Conditions:** Regarding commercial automated fuel (key/Cardlock) sites, each site shall be well lit, clean and be in an open area as to provide a safe environment for 24-hour use. All approved sites shall have functional fire extinguishers (that meet state and/or local Fire Marshal requirements), and shall have posted emergency telephone numbers for use in case of problems, and shall provide locally owned pay telephones

and/or emergency telephones. *Bretthauer Oil Company is a member of the Pacific Pride Commercial Fueling Network, which has established standards concerning the cleanliness, lighting, emergency sign posting, presence of pay telephones and fire extinguishers. As part of the Franchisee agreement with Pacific Pride, each site must conduct annual site inspections to ensure that all of the above mentioned requirements are being satisfied. Additionally, each site is subject to annual State of Oregon Fire Marshal Fire Safety audits, during which time the State Fire Marshal checks for appropriate signage concerning fuel-dispensing safety, emergency shut off, no-smoking requirements, and checks for the presence of functioning fire extinguishers.*

- 11) Spillage and Cleanup:** The Contractor shall be responsible for all spillage, which may occur during transit and unloading operations for both fuel drops and captive site fueling. The Contractor shall immediately report any spillage to the Contract Administrator for that site and clean up the spillage according to applicable EPA and State guidelines and requirements. Failure to do so will initiate corrective action and back charge to the Contractor of any incurred costs. *Bretthauer Oil Company has been providing both TVF&R and the City of Tigard fuel through fuel drops and captive site fueling. Bretthauer Oil Company has very stringent policies regarding unloading procedures and very qualified and experienced drivers who are thoroughly trained regarding our procedures. Bretthauer Oil Company has been recognized as having a very clean record in this regard and has been recognized with the "Trusted Carrier" award for our safe hauling practices. It is the goal of Bretthauer Oil Company to prevent any spills and the necessary cleanup of spills by adhering to very meticulous and thorough policies and procedures. In the event of a spill, Bretthauer Oil Company will meet all requirements concerning spillage and cleanup, and comply with all EPA and State guidelines and requirements concerning spillage and cleanup.*
- 12) Fuels:** The Contractor shall have a currently functional automated key/card-lock system for purchase of gasoline and diesel fuels meeting the following requirements:
- a. All motor fuels shall be free from impurities including, but not limited to water, dirt, harmful oils, fibrous materials, and other petroleum products or contaminants.
 - b. In case of damage directly traceable to the contaminated motor fuel at a site, the Contractor shall be responsible for the damage costs.
 - c. Fuel storage tanks shall comply with current and future Federal and State Regulations as implemented.
 - d. All fuels shall comply with applicable industry and government standards and specifications.
 - e. Regular unleaded gasoline shall have a minimum octane rating of 87.
 - f. Medium duty unleaded gasoline shall have a minimum octane of 89.
 - g. Super-unleaded gasoline shall have a minimum octane rating of 91.
 - h. Diesel fuel shall be (on road) #2. Diesel fuel shall be winterized to industrial standards for the area.

Bretthauer Oil Company meets or exceeds all of the above requirements.

- 13) **Fuel Availability:** The Contractor shall maintain supplies of regular unleaded gasoline, super unleaded, both on-road and off-road diesel to meet fuel requirements for TVF&R and the City on a 24-hour per day and 365 days per year (or 366 days in a leap year), during adverse weather conditions, National and State (Civil Defense) emergencies and fuel shortages.

The Contractor must be able to provide both gas and/or diesel fuel anywhere in TVF&R's and City's jurisdiction with a minimum 2-hour response time. The Contractor is required to provide an emergency response contact number that is available 24-hours and 365 days per year (or 366 in a leap year). If Contractor charges an additional fee for this, it must be stated in the Contractor's prices submitted in this RFP. *Bretthauer Oil Company is able to provide 24-hour per day and 365 day per year (366 days per year in cases of a leap year) emergency response. Bretthauer Oil Company provides a 24-hour per day emergency answering service, and is able to respond within a minimum of 2-hours to emergency fuel delivery. Bretthauer Oil Company will*

** charge \$100 per delivery for emergency deliveries needed outside of our normal hours of operation. Our normal hours of operation are 7:00 am through 5:00 pm Monday through Friday and 8:00 am through 12:00 pm on Saturday. We are closed on the following recognized holidays: New Year's Day, Memorial Day, 4th of July, Labor Day, Thanksgiving Day and Christmas Day. In the event stand-by services are required, the fee will be \$80.00 per hour.*

** The minimum fuel inventory required at the captive sites shall be no less than 1,000 gallons. Contractor shall monitor all fuel inventories at captive sites on a daily basis. Please state how you monitor fuel usage. Bretthauer Oil Company currently provides the fuel for both TVF&R's and City of Tigard's captive sites. Bretthauer Oil Company monitors the fuel inventory levels through the use of an Automated Fuel Management System. This system tracks each transaction that occurs at the captive site and keeps on-going inventory levels, which are monitored throughout each day to ensure an adequate inventory level for all fuel products at all captive site locations. Each day a reconciliation is performed of all transactions that occurred at each of the captive sites. In addition to the daily monitoring of inventory levels at the captive sites at TVF&R and the City, each time a delivery is made to either captive, the fuel levels are reconciled. This is accomplished via the driver taking a manual fuel level reading upon each delivery to a captive site and calling this information into the Accounting Specialist in the front office at Bretthauer Oil Company. The Accounting Specialist then compares this reading to the levels indicated in the Automated Fuel Management System. One additional reconciliation is done at month end by taking a reading at midnight on the last day of each month. This reading is reconciled to the inventory level in the Automated Fuel Management System*

- 14) **Fuel Site Locations:** Proposer shall provide a list of commercial fuel sites and the locations available. *Bretthauer Oil Company provides access to all sites within the Pacific Pride Commercial Fueling Network. Please see attached Attachment 2.C14.A Pacific Pride Locations Directory. Below is a list of fuel locations of TVF&R and the City.*

a. Fuel drop locations:

1.) Above ground on-road diesel tanks:

Sherwood Station (33), 655 NE Oregon, Sherwood with 550 gallons
Cornell Road Station (60), 8585 NW Johnson St., Portland with 550 gallons
Somerset Station (64), 3355 NW 185th, Portland with 550 gallons
Brockman Road Station (66), 13900 SW Brockman Rd., Beaverton with 550 gals
Cooper Mountain Station (69), 9940 SW 175th, Aloha with 550 gallons
Hill Top Station (50), 19340 SW Molalla Ave., Oregon City with 700 gallons

2.) Above ground unleaded fuel tank:

Hill Top Station (50), 19340 SW Molalla Ave., Oregon City with 300 gallons

3.) Underground off road diesel tank:

Tigard Police Department, 13125 SW Hall St., Tigard with 500 gallons

4.) Above ground off road diesel generator tanks:

Tigard Water Building, 8777 SW Burnham St., Tigard with 250 gallons
Canterbury Reservoir, 10490 SW Canterbury Lane, Tigard with 250 gallons
Tigard Gaarde Reservoir, 10201 SW 119th Place, Tigard with 500 gallons
Tigard, High Tor Reservoir, 14255 SW High Tor Drive, Tigard with 500 gallons
Regional Training Center, 12400 SW Tonquin Rd., Sherwood with 250 gallons
Administration Center, 20665 SW Blanton St., Aloha with 175 gallons
Wilsonville Station (52), 29875 SW Kinsman, Wilsonville with 175 gallons
Progress Station (53), 8480 SW Scholls Ferry Road, Beaverton with 175 gallons
Elligsen Road Station (56), 8455 SW Elligsen Rd., Wilsonville with 275 gallons
Aloha Station (62), 3608 SW 209th, Aloha with 175 gallons
Somerset Station (64), 3355 NW 185th, Portland with 175 gallons
Brockman Road Station (66), 13900 NW Brockman Rd., Beaverton with 165 gals
Cooper Mountain Station (69), 9940 SW 175th, Aloha with 175 gallons

- b. Captive Sites:** These are currently tied into the Pacific Pride system with fuel billed as it is used. Any costs to change the existing software/hardware at captive sites shall be the responsibility of the vendor.

- 1.) Two underground tanks located at City of Tigard Water Bldg., 8777 SW Burnham St., Tigard, with 2,000 gallons gasoline and 2,000 gallons diesel.
- 2.) Two above ground tanks located at Aloha Station (62), 3608 SW 209th, Aloha, with 1,000 gallons gasoline and 1,000 gallons diesel *(per Addendum #2)*.

Note: The Aloha Station captive site is also utilized occasionally by other outside agencies including Washington County Community Action Organization, Hillsboro Fire Department and Washington County Sheriff's Office with the vendor billing these outside agencies separately. TVF&R's permission is required for these agencies to utilize this site. Proposing vendors shall be required to get TVF&R's approval for outside agencies to use this site that currently has 24-hour access. *Bretthauer Oil Company is the current vendor for TVF&R's captive site and has worked with TVF&R to identify which outside vendors TVF&R wishes to grant access to their captive site, and has billed these agencies separately for their usage of TVF&R's captive site.*

- c. **Commercial Automated (Key/Cardlock) Systems:** Contractor shall supply the closest address of their commercial key/Cardlock fuel system that these locations listed below will fill up at. Fuel sites shall be within a 2-mile radius of these locations:

- 1) Sherwood Station (33), 755 NE Oregon, Sherwood for unleaded fuel only: *Bretthauer Oil Company has no site within a 2-mile radius of this location. However, we have enclosed a map of nearest Pacific Pride location to this station. Please see Attachment 2.B.14.A for Pacific Pride Fueling Site Details.*
- 2) Tualatin Station (34), 19365 SW 90th Court, Tualatin for diesel #2 and unleaded fuel: *Bretthauer Oil Company has no site within a 2-mile radius of this location. However, we have enclosed a map of nearest Pacific Pride location to this station. Please see Attachment 2.B.14.A for Pacific Pride Fueling Site Details.*
- 3) King City Station (35), 17135 SW Pacific Hwy., Tigard for diesel #2 and unleaded fuel: *Bretthauer Oil Company has an available foreign site at 15055 SW 72nd Avenue, Tigard that is within a 2-mile radius of this location*
- 4) Wilsonville Station (52), 29875 SW Kinsman, Wilsonville for diesel #2 and unleaded fuel: *Bretthauer Oil Company has an available foreign site at 28855 SW Boones Ferry Road, Wilsonville that is within a 2-mile radius of this location. Please see Attachment 2.B.14.A for Pacific Pride Fueling Site Details.*
- 5) City of Tigard, 13125 SW Hall Blvd., Tigard for diesel #2, regular and super unleaded fuel: *Bretthauer Oil Company has an available foreign site at 15055 SW 72nd Avenue, Tigard that is within a 2-mile radius of this location. Please see Attachment 2.B.14.A for Pacific Pride Fueling Site Details.*

- 15) **Key/Card-Lock Device:** Contractor shall provide the Contract Administrator with the required number of key/card-lock devices for dispensing motor fuels. The key/card-lock system and devices shall have individually unique characteristics to provide maximum-security measures to protect our agencies from fraud. There shall be two types of systems, one being a single key or card and the other being a dual card system. Each system shall have a code ID to identify the driver fueling and the vehicle. Upon receiving a request from the Contract Administrator, the contractor shall provide the key/card devices within 3 working days. Each proposer shall supply samples of forms used to issue the key/card devices. There shall be no charges for the issuance of key/card devices.

Bretthauer Oil Company currently provides both TVF&R and City of Tigard their Pacific Pride Commercial Fueling Cardlock cards. Bretthauer Oil Company offers both a single card system, with each driver being issued a card, and a dual card system, which requires the use of both a driver card and a vehicle card. In both the single card system and the dual card system there are security measures in place to provide maximum security and prevent the fraudulent use of the agencies cards. Each driver card requires an individually unique Personal Identification Number (PIN). With each card order request, the cards are issued and mailed separately from the PINs. This is done to prevent the possibility of an unauthorized person obtaining your new card order and being able to use your cards fraudulently.

In both the single card system and the dual card system, the capability for tracking the vehicle associated with each fueling transaction is possible. In the single card system, the miscellaneous keyboard option can be activated to enable the driver to punch in the vehicle number during each fuel dispensing transaction. The dual card system was designed to track the vehicle associated with each fueling transaction, and therefore requires the use of the vehicle card before the system will allow the product to dispense.

Requests from the Contract Administrator for new cards will be fulfilled within 3 working days. Bretthauer Oil Company will accept Cardlock requests through either completion of a Cardlock Request Form (see Attachment 2.C.15.A) or by e-mail. Completed Cardlock Request forms should be faxed to the Cardlock Customer Service Representative at (503) 640-4518. E-mail requests should be sent to Kathy@bretthauer.com. Bretthauer Oil Company will not charge for the issuance of key/card devices.

- 16) **Key/Card-Lock Invalidation:** Contractor shall have in place a system that will receive and respond to an invalidation notification within eight (8) hours. Notification of a misplaced or stolen key/card device shall be provided immediately to the Contractor by each user of the misplaced or stolen key or card that requires deactivation. Literature shall be provided by each proposer explaining its invalidation notification methods and procedures. A sample of this literature shall be provided with the proposal.

Proposer shall be required to be insured to cover all unauthorized transactions due to theft or loss of a card.

Bretthauer Oil Company has a system in place to receive and respond to invalidation notification within eight (8) hours. Bretthauer Oil Company's invalidation notification method is done via the Cardlock Request Form (see Attachment 2.C.15.A). Instructions for completion of the Cardlock Request Form and Bretthauer Oil Company's invalidation notification method are attached in Attachment 2.C.15.B. Section 3 of the Cardlock Request Form is used to inform Bretthauer Oil Company of any cards requiring invalidation. This form must

be filled-out completely and faxed to the Cardlock Customer Service Representative at Bretthauer Oil Company, fax number (503) 640-4518. Invalidation notifications may also be done via e-mail by sending invalidation requests to Kathy@bretthauer.com. Invalidation notifications will be processed immediately upon receipt of the invalidation notification from TVF&R or the City. Pacific Pride performs invalidations once a day at 9:00 pm. Bretthauer Oil Company understands and acknowledges that any charges to cards for which a notification of invalidation was received and for which more than 8 hours of time has elapsed since the receipt of the notification of invalidation, will be the responsibility of Bretthauer Oil Company.

- 17) **Key/Card Lock Device Invalidation Liability.** The Contractor shall be responsible for purchases at any of its key/card lock sites after eight (8) hours has expired following notification of invalidation. The public agencies covered by this agreement shall be responsible for purchases in the first 8 hours up to \$50.00 after verbal notification of invalidation. Each proposer shall describe additional dollar limitations (if any) available in regard to agency liability. *Bretthauer Oil Company does not have any additional dollar limitations and will be responsible for purchases made after the first eight hours after written notification of invalidation. Written notification of invalidation may be accomplished via the completion and faxing of the Cardlock Request Form (see Attachment 2.C.15.A) to the Cardlock Customer Service Representative or by e-mailing the notification of invalidation to Kathy@bretthauer.com.*

Additional dollar limitations: In consideration of additional specific dollar limitations, TVF&R and the City agree:

- ☐ Not to place applicable security codes on key/card devices; and
- ☐ To cooperate with Contractor in identifying the person(s) responsible for charges in excess of the agreed upon dollar limitations

- 18) **Valid Vehicles:** Purchase charges for valid vehicles shall be paid by the agency. Any charge not corresponding to a valid vehicle shall be deducted from the billing and the Contractor shall be notified. *Bretthauer Oil Company will verify, as requested, that all charges to TVF&R and the City are for purchases made by the use of a valid driver card. Any charge not corresponding to a valid vehicle will be deducted from the billing. Purchase charges for vehicles will be considered valid if an active driver card is used in conjunction with a vehicle card that corresponds to the drivers account. For example, if a City of Tigard Water Department driver card is used in conjunction with a City of Tigard Police Department vehicle card, that purchase charge will be considered valid.*

- 19) **Cardlock Systems Cards and Information:** Contractor shall provide the necessary card(s) for initial and follow-up issue. Upon receiving a request for additional card(s), the Contractor shall provide the additional card(s) within 3 working days of the request. Printed instruction, information sheets, on-location instructions, and fuel location maps shall be provided for each card when requested, updated and/or changed at no charge.

Replacement cards will be provided at no cost to TVF&R or the City. *Bretthauer Oil Company is able to satisfy all requirements concerning Cardlock systems cards and information.*

- 20) Billing Report/Summary Statement:** The Contractor shall provide a semimonthly (the 15th and the last day of the month) summary statement to each public agency, within five (5) business days of the end of each billing cycle. All reports shall include fuel price charge, number of gallons, type of fuel, vehicle ID or license number, odometer reading, person name or ID number making purchase, site, date and total volume of all fuel types. *Bretthauer Oil Company currently provides a semimonthly billing for billing periods ending the 15th and the last day of each month to both TVF&R and the City. This billing statement is capable of providing all information listed above, provided Cardlock cards have been requested to be set-up providing the information listed above, and provided that odometer readings are keyed into the miscellaneous keyboard option during each fueling transaction. Please see the enclosed Attachment 2.C.20.A for a sample report.*

Contractor must be capable of transmitting billings electronically to each agency in an ASCII format (".txt" file) that is in comma-delimited format and is readable by TVF&R's and City's vehicle information management system. Proposal shall include sample billing reports, and a report on 3.5" floppy disk or CD-ROM for comparison and compatibility to existing software. Proposer shall provide 2 disks, one for each agency. *Bretthauer Oil Company currently provides a report meeting the specifications above to TVF&R. Bretthauer Oil Company has the capability to continue providing this report to TVF&R and to provide a similar report, meeting all of the specifications listed above, to the City. Please see Attachment 2.C.20.B for a sample of this report.*

Summary statements must include identification of each department/agency and the charges per department/agency. Summary reports shall be sent to Accounts Payable, TVF&R, 20665 SW Blanton Street, Aloha, OR 97007 for TVF&R purchases. City statements shall be sent to Accounts Payable, City of Tigard, 13125 SW Hall Blvd. Tigard, OR 97223.

- 21) References:** Each proposer shall submit a list of three (3) current customers (priority given to other government customers) using existing fuel sites in Washington County, Multnomah County or Clackamas County. The list must include name of City, County, and/or State Agency, or if private, company name, contact person and telephone number.

Bretthauer Oil Company's List of References:

<u>Name</u>	<u>Contact Person</u>	<u>Title</u>	<u>Phone Number</u>
City of Beaverton	Craig Crawford	Fleet Supervisor	(503) 526-2207
Beaverton School District	Larry Skinner	Superintendent	(503) 672-3726
CleanWater Services	Dane Smith	Field Operations	(503) 846-7099

22) **Qualifications:** Responding firms shall provide sufficient information to demonstrate the firm's qualifications to meet the requirements in this RFP. Proposer shall provide a list of previous experience and performance on projects of similar scope and size as well as vendor's qualifications and experience of personnel. *Bretthauer Oil Company has extremely applicable experience, as we are the current fuel service provider for both TVF&R and the City. Bretthauer Oil Company has been taking care of TVF&R's fuel needs over the past 13 years and the City of Tigard for the past 12 years. We provide fuel drops on both a keep-full service basis and on a will-call basis. We have also provided Stand-by services with fleet fueling trucks during times of emergency when fire fighting equipment was not able to leave the scene. We monitor the inventory level of TVF&R's and the City's captive sites, and make deliveries as needed to ensure an optimal level of fuel is always present. We bill for the captive site usage as product is used, and combine the billing for the captive site usage along with the usage TVF&R and the City have within the Pacific Pride Network. We provide semimonthly billing summary statements, identifying each individual transaction including the driver ID, the vehicle ID, odometer readings, product, gallons, site, and we provide this billing information in an ASCII file format in a timely manner to TVF&R (typically on the same day we process our billing this file is e-mailed to TVF&R).*

Bretthauer Oil Company has been a petroleum distributor for the past 70 years. Bretthauer Oil Company has been an independent Franchisee of the Pacific Pride Commercial Fueling Cardlock Network for 15 years. During that time we designed, developed and implemented 16 captive sites throughout Oregon and Washington. We are very proud of the longevity of employment we experience with many of our staff. On average, our drivers have 11 years of service with Bretthauer Oil Company.

Once a new employee has been hired, a rigorous training program is provided to ensure they are provided with the necessary knowledge and skills to perform their job. The safety of our employees, customers and community is dependant upon the quality of our driver's job performance. Therefore, Bretthauer Oil Company places a strong emphasis on employee training and safety protocol. Our new employee's training program includes:

- i. New employee orientation to educate employee on Bretthauer Oil Company's policies and procedures*
- ii. 2 week driver training period, during which time an experienced Bretthauer Oil Company employee accompanies new driver on routes to provide further training regarding:*
 - 1. Equipment*
 - 2. Products*
 - 3. Delivery procedures*
 - 4. Customers*
 - 5. How to handle emergency situations*
- iii. Hazardous Material Training by OTA, as required by ODOT*

- iv. Provided with Hazardous Material Compliance Handbook for reference*
- v. Provided with Motor Carriers Federal Regulations Handbook for reference*
- vi. Provided with North American Emergency Response guidebook for reference*

23) Pricing:

- a. The Price per gallon shall be the proposer's mark-up cost over transfer price per gallon. TVF&R and the City will pay only a price per gallon.
- b. Mark-up cost shall include all of the proposer's costs over the transfer price of fuel. For example, but not limited to:
 - Per transaction cost
 - Costs associated with initial setup and distribution of cards
 - Costs for additional cards
 - Accounting fees
 - Emergency power
- c. Mark-up Cost shall not include wholesale purchase price or applicable taxes.
- d. No finance charges shall be charged for payments made within 60 days of the billing date.
- e. TVF&R and the City understands that the Contractor's price is based on the site transfer price, which varies at different sites, reflecting variations in transport cost and site expenses. TVF&R and the City also understands that the site transfer price is based rack averages for that market, and that the price will vary over time depending on fluctuations in rack prices. The Contractor will base its price to TVF&R and the City on the site transfer price plus the quoted mark-up cents per gallon.
- f. Sample Pricing: For the purpose of determining the cost to TVF&R and to the City, the Contractor will base its price to TVF&R and the City on the site transfer price plus the quoted mark-up cents per gallon.

Section

5

Bretthauer Oil Company

Proposal Form

Please see attached Proposal Form for Sample Pricing Proposal form for each of the items specified.

Commercial Cardlock Locations

Locations of Company owned Commercial Cardlocks:

Bretthauer Oil Company currently owns and operates 2 Commercial Cardlocks, which are located at 453 SW Washington St., Hillsboro, Oregon and at 6800 SW 110th Ct., Beaverton Oregon. We are currently in the process of building another Cardlock located at 21180 NW Amberwood Dr., Hillsboro, Oregon.

Locations of Non-Company owned Commercial Cardlocks within Vendor's Service Area:

Bretthauer Oil Company is a member of the Pacific Pride Commercial Fueling Network, and therefore has access to all Pacific Pride Cardlock locations. Any Cardlock within the Pacific Pride Network is within the Service Area of Bretthauer Oil Company.

Locations of Non-Company owned Commercial Cardlocks outside Vendor's Service Area:

Bretthauer Oil Company's service area includes the entire Pacific Pride Commercial Cardlock Network. Therefore, wherever there a Pacific Pride Cardlock is located, it is within the Service Area of Bretthauer Oil Company.

SECTION FIVE

PROPOSAL FORM

PROPOSAL TITLE: FUELING AT CAPTIVE SITES & FOREIGN SITES THROUGH THE USE OF COMMERCIAL AUTOMATED (KEY/CARD-LOCK) FUEL SYSTEMS AND FUEL DROPS

PROPOSAL OPENING: NO FORMAL OPENING DUE DATE SEPT. 11TH 3:00 PM

FIRM NAME: BRETTHAUER OIL CO.

Directions: Please complete the sample pricing proposal form for each of the items specified. The Markup Price per Unit will be the same for each product, regardless of item, and will remain constant for the duration of the contract. State the Site Transfer Price per Unit by location effective as of 7/31/01 (e.g., as if all transactions occurred on that date).

Item	Product	Unit	Markup Price per Unit ⁽¹⁾	7/31/01 Site Transfer Price per Unit ⁽²⁾	Total Cost per Unit	Estimated Annual Quantity	Estimated Annual Total Cost
Fuel Drops at locations specified in Section Two.C.14.a.							
1.	Gasoline, unleaded, regular grade	gallons TVF&R	.10	.8285	.9285	479	444.75
2.	Diesel, number 2	gallons TVF&R	.10	.7180	.8180	26,502	21678.64
3.	Diesel, offroad	gallons TVF&R	.10	.6765	.7765	764	593.25
Subtotal						27,745	22716.64
Captive Site Fueling at locations specified in Section Two.C.14.b.							
1.	Gasoline, unleaded, premium grade	gallons TVF&R Tigard	.08	.9435	1.0235	14,512 67,711	14853.03 69302.21
2.	Diesel, number 2	gallons TVF&R Tigard	.08	.7180	.7980	20,469 12,673	16334.26 10113.05
Subtotal						115,365	110602.55

Item	Product	Unit	Markup Price per Unit	Site Transfer Price per Unit (2)	Total Cost per Unit	Estimated Annual Quantity	Estimated Annual Total Cost
Company owned commercial fuel cardlocks.			6750 SW 110th AVE				
Locations (3):			BEAVERTON, OR				
1.	Gasoline, unleaded, regular grade	gallons TVF&R Tigard	.05	.8592	.9092	5726	5206.08
2.	Gasoline, unleaded, premium grade	gallons TVF&R Tigard	.05	1.01025	1.06025	1760	1866.04
3.	Gasoline, unleaded, mid-grade	gallons TVF&R Tigard	.05	.92969	.97969	0	0
4.	Diesel, number 2	gallons TVF&R Tigard	.05	.70329	.75329	20867	15718.90
Subtotal						28353	22791.02
Non-company owned commercial cardlock			15055 SW 72ND AVE				
within service area. Locations (3):			TIGARD, OR				
1.	Gasoline, unleaded, regular grade	gallons TVF&R Tigard	.05	.84996	.89996	12806 1627	11524.89 1464.23
2.	Gasoline, unleaded, mid-grade	gallons TVF&R Tigard	.05	.89528	.94528	437 161	413.09 152.19
3.	Gasoline, unleaded, premium grade	gallons TVF&R Tigard	.05	.96541	1.01541	1239 5053	1258.09 5130.87
4.	Diesel, number 2	gallons TVF&R Tigard	.05	.74376	.79376	24473 0	19425.69 0
Subtotal						45796	39369.05
Non-company owned commercial cardlocks			OTHER MISCELLANEOUS				
outside service area. Locations (3):			CARDLOCKS				
1.	Gasoline, unleaded, regular grade	gallons TVF&R Tigard	.05	A	B	2152 78	B
2.	Gasoline, unleaded, mid-grade	gallons TVF&R Tigard	.05			42 28	
3.	Gasoline, unleaded, premium grade	gallons TVF&R Tigard	.05			91 20	
4.	Diesel, number 2	gallons TVF&R Tigard	.05			204 0	
Subtotal							

Request for Proposal for Fueling at Captive Sites and Foreign Sites Through the
Use of Commercial Automated (Key/Card-Lock) Fuel Systems and Fuel Drops.
Close: 9/11/01

17

- A This RFP does not provide necessary information to complete this section
- B Margin to remain at .05 cents, however total cost

EXHIBIT C

CITY OF TIGARD (Buyer) STANDARD TERMS AND CONDITIONS

1. **Packing & Shipment.** Deliveries shall be made as specified, without charge for boxing, crating, carting or storage. Material shall be suitably packed to ensure against damage from weather or transportation and to secure lowest transportation costs, and in accordance with the requirements of common carriers. Buyer's Order number and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each box or package shipment. Buyer's count or weight shall be conclusive on shipment not accompanied by packing lists. Unless otherwise specifically agreed on the reverse side of this Agreement, all costs of packaging and shipment are included in the purchase price and all goods will be shipped, with all costs prepaid. Risk of loss to goods in shipment (including damage, destruction, theft, or loss) shall be borne by the Seller. Risk of loss shall not pass to Buyer until the goods are delivered to and checked in at the location specified by Buyer in this Order.
2. **Warranty.** Unless otherwise agreed in writing, Seller warrants that the products ordered will conform to the specifications herein and to any drawings, samples, or other description furnished or adopted by Buyer. All products are warranted to be merchantable, to be of the highest quality design, material, and workmanship and free from defect and to be fit for purpose intended. All warranties shall survive inspection or test, acceptance and payment. Warranties shall run to Buyer, its successors, assigns and customers. Warranty period shall be (1) year from date of acceptance by Buyer.
3. **Inspection and Acceptance.** At Buyer's request, Seller shall provide a complete inspection program; satisfactory to Buyer, for Buyer's inspection of all materials, fabricating methods, equipment in process work and finished products. If this Order provides for inspection of the work by Buyer on site during the period of manufacture, Seller agrees to provide Buyer's inspectors with reasonable facilities and assistance during such inspection. Inspection by Buyer shall not unduly delay the work. Buyer may charge Seller any additional cost incurred by Buyer if the work is not ready in accordance with the inspection schedule. Any inspection made or Waiver-of-Inspection-Notice given by Buyer will not relieve Seller from its responsibilities for delivering products and work hereunder. Acceptance or rejection of the products shall be made up to 10 days after delivery and inspection by Buyer except as otherwise provided herein. Failure to inspect and accept or reject products shall neither relieve Seller from responsibility for such products, which do not meet the requirements herein nor impose liability on Buyer therefor.
4. **Delivery.** If Seller fails to meet the delivery schedule provided herein, Buyer may require Seller to deliver the products, or any portion thereof, in any manner commercially necessary to speed delivery, all at the Seller's sole expense. Unless otherwise agreed upon in writing by Buyer and Seller, Seller shall be required to pay the normal freight weight plus any premium rate required. Invoices covering products shipped in advance of the date specified will not be paid until after the date specified for delivery and are subject to rejection, as provided in this paragraph immediately below, if shipped too early. Neither party shall be liable for delays or defaults due to strike, fire, windstorm, riot, natural disaster, war, civil unrest or other similar unforeseeable cause beyond the control and without the fault or negligence of the party incurring such delay. Seller shall notify Buyer in writing of the existence of such cause within five (5) days after the commencement of the delay or default giving pertinent information concerning such cause. No delivery shall be made more than seven (7) days prior to the applicable delivery date, and Buyer shall have the right to return earlier deliveries at Seller's risk and expense or charge to Seller any additional costs sustained because of the same.
5. **Buyer-Furnished Materials.** Seller shall assume all risk of loss of any material furnished by Buyer to Seller for use in performance of this Order.
6. **Taxes.** Seller shall not invoice Buyer for any taxes nor include in Seller's price any federal excise, state, or city tax or any other tax, unless Seller has first asked Buyer for Buyer's tax exemption number and it has been agreed upon between both parties that Buyer is not exempt from the tax.
7. **Changes.** Buyer may, by written order, make changes including changes in drawings or specifications. Buyer will equitably adjust any difference in cost or time for performance resulting from such change and the Order modified in writing accordingly. ANY CLAIM BY SELLER UNDER THIS CLAUSE MUST BE ASSERTED IN WRITING WITHIN 30 DAYS FROM THE DATE OF SELLER'S RECEIPT OF THE CHANGE ORDER OR THE CLAIM WILL NOT BE ALLOWED. In the event that Buyer proposes any change prior to making such change by written order and such change will have an effect on the warranty of the products procured by this Order, Seller shall notify Buyer in writing of such effect within 10 days of receipt of such proposal.
8. **Advertising.** Seller shall not, without the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish to Buyer the products herein.
9. **Cancellation for Cause.** Buyer may cancel all or any part of the undelivered portion of this Order if Seller breaches any of the terms hereof or in the event of any of the following: Insolvency of Seller, a voluntary or involuntary petition in bankruptcy for, by or against Seller; the appointment of a receiver or trustee for Seller, or an assignment for the benefit of creditors by Seller or if Buyer has reasonable cause to believe Seller will become insolvent, file for bankruptcy, go out of business or that the products being shipped may be subject to lien, claim or attachment by a creditor of Seller. Any such cancellation under this section shall be

cancellation for cause and in the event of such cancellation, Buyer shall have the right to complete, or cause to have completed, this Order including the right to cause Seller to produce, without liability of any kind to the Buyer, proprietary items of the Seller as necessary to complete the Order. The remedies and damages in this section shall be cumulative and in addition to any other or further remedies provided at Law or in Equity, including reasonable and necessary attorney's fees and other costs of litigation.

10. Termination. City has the right, in its sole discretion, to terminate without cause or for no cause, to termination this Agreement at any time by giving notice to Seller. If City terminates the contract pursuant to this section, it shall pay Seller for goods shipped by Seller prior to receipt by Seller of the notice of termination. City may deduct the amount of damages, if any, sustained by City due to any breach of contract or warranty by Seller. Damages for breach of contract or warranty shall be those allowed by Oregon law, reasonable and necessary attorney fees, witness fees (expert and non-expert), and other costs of litigation at trial and on appeal.
11. Assignment and Subcontracting. Seller may not assign or subcontract any of its rights or obligations hereunder without the prior written approval of Buyer. Any unapproved assignment shall be void. Seller shall be fully responsible for the acts or omissions of any subcontractors and all persons employed by them, and neither the approval by Buyer of any subcontract nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and the Buyer. Buyer may assign its rights under this Order.
12. Work on Buyer's Premises. If Seller's performance of this Order involves operations by Seller on Buyer's premises, Seller shall (a) provide all necessary and sufficient safeguards and take all proper precautions against the occurrence of injury to any person or damage to any property, and shall be responsible for and shall indemnify and hold harmless Buyer, its representatives, officers, employees, and agents from any and all loss, suit, action or claim, including cost and attorney's fees, by reason of injury, including death, to any person and carry public liability and property damage insurance with limits of liability of not less than \$300,000 each, unless higher limits are required by a signed purchase agreement, with contractual liability endorsement and such insurance of employees as may be required by any workmen's compensation act or other law, regulation or ordinance which may apply in the premises. Such public liability and property damage insurance shall also cover the operation of Seller's vehicles used in the performance of Seller's operations. Any policy of insurance written in accordance with the foregoing shall be appropriately endorsed to named Buyer, its officials, employees and agents as additional insureds, with provisions that such insurance is primary insurance with respect to their interest, and that any other insurance maintained by Buyer is excess and not contributory insurance with the insurance required hereunder, with cross-liability or severability of interest provisions, and shall further provide that the coverage provided thereby shall not be modified or discontinued or terminated except upon 30 days prior written notice to Buyer. Compliance shall be verified by Certificate of Insurance with appropriate endorsements sent to Buyer prior to Seller commencing work on Buyer's premises. Any work performed on Buyer's premises must be done pursuant to all OSHA standards, all applicable State and Federal health and safety laws, rules and regulations and all workers must be covered by workers' compensation insurance furnished through and paid for by Seller.
13. Stop Work Order. Buyer may, at any time by written order to Seller, require Seller to stop all, or any part of the work called for by this Order for a period of 90 days after the written order is delivered to Seller, and for any further period to which the parties may agree and for any other period to which the parties may have agreed or as provided in Section 4, 10, and/or 11. Within the period of 90 days or less or within any extension of that period, Buyer shall either: (a) cancel the "Stop Work Order" and direct Seller to resume work; or (b) terminate the work covered by this Order. If Buyer orders Seller to resume work, Seller shall be entitled to any equitable adjustment pursuant to Section 8 provided a claim for such an adjustment shall be submitted by Seller within 30 days after the end of the period of work stoppage.
14. Payment. Payment date and cash discount period shall be calculated from the date of Buyer's receipt of an acceptable invoice and Buyer's acceptance of the products and supporting documentation at destination.
15. Information/Data. Unless otherwise agreed in writing any designs, drawings, specifications, or other manufacturing information furnished by Buyer to Seller shall be confidential to Buyer and is furnished solely for the performance of this Order. All copies of such information shall be returned to Buyer upon completion of the Order. Any designs, drawings, specifications, or other manufacturing information delivered by Seller to Buyer may be used for any purpose whatsoever. The foregoing shall apply notwithstanding the presence or absence of any contrary legend or statement on any of such information. All business and governmental information materials containing business and governmental information provided by Buyer to Seller shall be treated as confidential.
16. Compliance with Laws and Regulations. Seller warrants that all products, goods, or work delivered and performed shall comply with all applicable Federal, State or Local Laws or Regulations including without limitation The Occupational Safety and Health Act (29 USC. Chapter 15); Federal Hazardous Material Transportation Act (49 USC. Chapter 27); Equal Employment Opportunity; E.O. 11246 and 41 CFR Sections 60-1.4 and 60-1.7; Employment of the Handicapped E.O. 11758 and 41 CFR Section 60-741-4; Utilization of Minority Enterprises E.O. 11625 and 41 CFR Subpart 1-1.13; Age Discrimination E.O. 11141, Employment of Veterans E.O. 11701 and 41 CFR Section 50-250.4 and all rules, regulations and amendments issued pursuant to the foregoing. Seller shall indemnify Buyer, its officers, employees and agents against any damages, penalties, costs or expenses incurred in connection with any alleged violation of any Federal, State or Local Law or regulating the manufacture or sale to the Buyer of any Item covered by this Order.
17. Patents, Copyrights, Trademarks. Seller warrants that no products will be furnished hereunder, which infringe or contribute to the infringement of any letters patent, copyright or trademark. Seller agrees to immediately replace at its sole cost any products

furnished hereunder which infringe or contribute to the infringement of any letters patent, copyright or trademark or to take all steps necessary at Seller's sole expense to remove such infringement.

Seller will indemnify and hold harmless Buyer, its representatives, officers, employees and agents from and against any and all costs, royalties, damages and/or expenses which may arise out of or result from, or be reasonably incurred in contesting any claims that the methods, processes or acts by the Seller or its employees or the products furnished hereunder, infringes or contributes to the infringement of any letters, patent, copyright or trademark.

18. Waiver. The failure of Buyer to enforce at any time any of the provisions of this Order or to exercise any option herein provided, shall not be a present or future waiver of such provisions, nor in any way affect the validity of this Order or any part hereof, or the right thereafter to enforce each and every such provision. The express waiver (whether one (1) or more times) of any provision, condition or requirement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.
19. Independent Contractor. Seller is an independent contractor and persons employed by Seller shall be employees of Seller and not employees of Buyer.
20. Complete Agreement. The Purchase Order and any referenced attachments constitute the complete agreement between the parties. Except as otherwise provided herein, it is subject to change only by an instrument signed in writing by both parties.
21. Acceptance by Performance. If Seller fails to provide to Buyer with a signed copy of this order, but delivers product or performs the services specified in this agreement, then Seller agrees that the Seller shall be deemed to have accepted the terms and conditions of this order, as provided on both the front and this reverse side of the order. Buyer must agree any changes or modifications to this order by Seller to, in writing, or they shall not be deemed accepted by Buyer and if the Seller delivers the products nonetheless, then the original terms and conditions of this order shall govern.
22. Mandatory Mediation and Binding Arbitration. If there is a dispute concerning any of the terms, conditions or the performance of this order, then it is hereby agreed by both Buyer and Seller that the dispute shall be submitted first to non-binding mediation, to be performed by a sole mediator to be agreed upon between Buyer and Seller. If a mediator cannot be agreed upon, then the parties agree that any Circuit Court judge for the State of Oregon, County of Washington, shall be authorized to appoint a mediator for the parties.
Should the parties fail to reach an agreement through mediation, then the parties shall submit to binding arbitration, which shall be governed by the rules of the Arbitration Service of Portland, and shall be conducted within Washington County. The arbitration shall be conducted by a single arbitrator chosen by mutual agreement of the parties. If the parties are unable to agree on an arbitrator, the parties shall ask the Presiding Judge of the Circuit Court for Washington County to select the arbitrator. If the arbitrators determine that one party is the prevailing party, then the losing party shall be required to pay all fees and costs of the arbitration. On the other hand, if the arbitrators determine that neither party is to be considered the prevailing party, then the fees and costs of the arbitration shall be divided equally between the parties. The parties knowingly and voluntarily waive their rights to have their dispute tried and adjudicated by a judge or jury. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, then the other party shall be entitled to costs, including reasonable attorney fees, for having to compel arbitration or defend or enforce the award. The parties agree to defend the arbitrator and any individual engaged in the administration of an arbitration proceeding from any subpoenas or claims from third parties arising out of this order or the arbitration.
23. Jurisdiction and Attorney Fees. This order shall be governed and construed according to the laws of the State of Oregon. If a dispute shall arise under this order necessitating the services of an attorney, then the prevailing party shall be entitled to collect from the losing party all of its/his/her reasonable costs and attorney fees, either in arbitration (if awarded by the arbitrator as provided above), or by a court before which any matter concerning this order may be heard, both at trial and on appeal.
24. Neutral Interpretation. This order constitutes the product of negotiations between the parties hereto. Any enforcement hereof will be interpreted in a neutral manner and not more strongly for or against any party based upon the source of draftsmanship.
25. Severability. Nothing contained herein shall be construed to require the commission of any act contrary to law, and wherever there is any conflict between the provisions contained herein and any present or future statute, law, ordinance or regulation contrary to which to the parties have no legal right to contract, the latter shall prevail. The provision of this Agreement, which is affected, shall be curtailed and limited only to the extent necessary to bring it within the requirement of the law.
26. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday or such holiday, then that period shall be extended to include the next day which is not a Saturday, Sunday or holiday.
Notice. Any notice required or permitted to be given by either party to the other shall be deemed to have been given when sent via telecopy, overnight air courier, or deposited in the United States mail certified, return receipt requested, with first class postage prepaid, addressed as indicated on the front of this order, or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Notice shall also be considered effective upon delivery if personally delivered.
27. Conditions of Supplying a Public Agency. Where applicable, seller must make payment promptly as due to persons supplying Seller labor or materials for the execution of the work provided by this order. Seller must pay all contributions or amounts due from Seller to the industrial accident fund incurred in the performance of this order. Seller shall not permit any lien or claim to be filed or prosecuted against Buyer or any subdivision of Buyer on account of any labor or material to be furnished. Seller further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

28. Payment of Claims by Public Officers. In the event that Seller fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Seller or a subcontractor of Seller by any person in connection with the performance of this order when such claim becomes due, then the proper officer or officers representing the Buyer hereunder may pay such claim to the person furnishing the labor or services and charge the amount of the payment against the funds due or to become due to the Seller by reason of this order. The payment of a claim in the manner authorized by this provision shall not relieve the Seller or any of the Seller's surety from obligations with respect to any unpaid claims.
29. Health Care Benefits for Seller's Employees. If this order involves public service, then Seller must provide health care benefits to all employees who are performing services previously performed by public employees performing similar duties under this order.
30. Hours of Labor. If labor is performed under this order, then no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, or emergency or where the public policy absolutely requires it, and in such cases, except cases of contracts for personal services as defined in ORS 279.050, the labor shall be paid at least time and a half for all overtime in excess of eight (8) hours a day and for all work performed on Saturday and on any legal holidays as specified in ORS 279.334. In cases of contracts for personal services as defined in ORS 279.050, any labor shall be paid at least time and a half for all hours worked in excess of forty (40) hours in any one week, except for those individuals excluded under ORS 653.010 to 653.260 or under 29 USC SS 201-209.
31. Medical Care and Workers' Compensation. Seller shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury, to the employees of such Seller, of all sums which the Seller agrees to pay for such services and all moneys and sums which the Seller collected or deducted from the wages of the employees pursuant to any law, contractor agreement for the purpose of providing or paying for such service.

AGENDA ITEM # _____
FOR AGENDA OF 10/09/01

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Award of Laptop Computer Bid

PREPARED BY: Paul de Bruyn DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Award contracts to the top three successful laptop computer vendors.

STAFF RECOMMENDATION

Award contracts to ESP Tecchnology - Wilsonville, Sterling Computers - Lomita CA, and Alsea Computers - Corvallis, Oregon. Awarding contracts to multiple vendors gives us the ability to order equipment from a secondary vendor should the primary vendor fail to meet city requirements at any time.

INFORMATION SUMMARY

The City of Tigard has not had a laptop computer contract with any specific vendor in the past year. We have been purchasing laptops in small quantities, using the vendor who had the most favorable price/performance at the time of purchase.

The City published an RFP on July 25, 2001 with a due date of August 30, 2001. The City received fourteen bids. Three of these were disqualified as being non-responsive to the RFP requirements. A fourth vendor chose to withdraw their bid upon being questioned about equipment features. The remainder of the bids were graded on fifty-four items, one of which was price. Lowest price was not the deciding factor, although the lower prices earned more points. Other factors such as features, vendor responsiveness, and manufacturer quality & reliability as gleaned from several industry surveys were considered. The selected vendors are able to deliver a variety of laptop brands, should we decide to order a laptop with different features than the original specification.

OTHER ALTERNATIVES CONSIDERED

Although most of the vendors might be able to satisfy the city's requirements, when we factored in measurements other than cost, the selected three bidders were deemed the best choice for the city. The City's intent is to purchase laptop equipment from each of these three successful vendors. The awarded vendors will be compared to each other to determine the primary cost effective vendor for the city at time of order.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

Attached is a spreadsheet showing each of the fifty-four points used for grading and a column for each vendor with their awarded points. The highest scoring vendor is in column one, on the left, the lowest scoring vendor is on the right. Although Dell was awarded the most points, Dell stated that they refused to sign a City contract, and that they required the City to agree to their contract. This resulted in their being deleted from consideration. Another high ranking vendor, AVR, was omitted when we found they were not authorized to sell the equipment they were bidding...

FISCAL NOTES

The funds for this are already budgeted and approved. There is no need for additional funding.

EVALUATION RECAP OF LAPTOP PROPOSALS SEPTEMBER 9, 2001

PAGE ONE OF TWO

<i>Vendor Name City/State</i>	<i>Dell Texas</i>	<i>Sterling Lomita, CA</i>	<i>ESP Wilsonville</i>	<i>AVR Virginia</i>	<i>Alsea Corvallis</i>	<i>Networkland Virginia</i>	<i>JFK Micro Industry, CA</i>	<i>CTL-2 Beaverton</i>	<i>CTL-1 Beaverton</i>	<i>Global Ohio</i>	<i>Socrate Non-res</i>	<i>MultiWa Industry</i>	<i>Max Co Beaverto</i>
Vendor Qualification													
Numb Copies	2	3	3	3	3	3	3	3	3	3	No com	Withdre	Non-res
Used Our Bid form?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	info	Bid	
Registered in OR?	Yes	No	yes	Yes	Yes	No	Nc	Yes	Yes	Yes			
Corp History?	No	Yes	No	No	No	No	Yes	No	No	No			
How long in Biz	17	6	10	14	5	10	12	12	12	52			
Number Emps	Unk	Unk	Unk	Unk	Unk	Unk	Unk	Unk	Unk	Unk			
When registered in OR	Unk	No	Unk	Unk	Unk	Unk	Nc	Unk	Unk	Unk			
5 years servicing laptops	Yes	Unk	Unk	Unk	Unk	Unk	Unk	Unk	Unk	Unk			
Telno - Email address	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes			
Local Office	No	No	Yes	No	Yes	No	No	Yes	Yes	No			
Points	6	5	6	4	6	4	5	5	5	5			
Hardware													
P-# 750	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes			
128MB	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes			
18GB	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes			
3 spindles	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Unk			
15"	Yes	Yes	14	Yes	Yes	Yes	Yes	No	Yes	Yes			
Touch Pad	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes			
PS/2 Mouse	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Unk			
PS/2 Keyboard	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Unk			
Two PCMCIA	Yes	Yes	1	Yes	Yes	Yes	1	Yes	Yes	Unk			
USB	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Unk			
56k Fax	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Unk			
Win98	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes			
Win2000	Yes	Yes	Yes	Yes	Yes	Yes	Yes	50	Yes	Yes			
Speakers	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Unk			
Mic	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Unk			
Line In	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Unk			
Serial	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Unk	Unk			
Parallel	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Unk	Unk			
Ethernet	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Unk			
Ext video	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Unk			
Both Active	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Unk			
4 hrs battery	Yes	3.5	Yes	Yes	Yes	Yes	Yes	2.5	2.5	Unk			
Lithium Ion	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Unk			
AC charger	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Unk			
Svideo	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Unk			
Points	25	23	22	25	25	23	22	22	21	7			

PAGE TWO OF TWO

Maintenance											
Weight	7.7	9.2	7.4	7.1	7	6.5	7.1	6.5	7.8	7.3	
Size	13x11x1.7	14x11x2.2	13x10x1.5	13x10x1.6	12x11x1.6	Unk	13x10x1.5	12x10x1.5	10x13x1.7	Unk	
Price	1744	1594-1462	1896-1994	1800/1921	2313	1395/1585	1485	1475	1870	1462/1510	
Warranty/Yes1 or 3	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	
Cost for 3 yrs	No	225	300	49	No	175	100	175	175	46	
Turn around time	No	2 days	3 days	48 hrs	2 days	3 days	48 hrs	3 days	3 days	7 days	
48 hours?	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Two A+ techs capable of re	Yes	Yes	Yes	Unk	No	Unk	Yes	Unk	Unk	Unk	
Warranty by bidder	Yes	Yes	Unk	Unk	No	Unk	Yes	Unk	Unk	Unk	
Points	2	6	5	4	2	4	6	4	4	4	
Responsiveness to RFP Requirements											
Docs	Yes	Yes	No	Yes	No	No	No	No	No	Yes	
Annual Revenue	32Bill	12M	3M	11M	581k	15M	Unk	60M	60M	1.6Bill	
3 references	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Company, Name, Phone	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Primary & Secondary	Yes	Yes	Yes	No	No	No	No	No	No	No	
Name, Phone Email	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	
Points	6	6	5	4	4	4	3	3	3	5	
Price	1744	1462	1896	1800	2313	1395	1485	1475	1870	1462	
Points	5	8	2	4	1	9	6	7	3	8	
Miscellaneous											
Bag	23	Std	50	Std	40	15	Std	Std	Std	Std	
Win2000	Std	Std	Std	62	99	135	50	50	50	48	
Brand/Model	Latitude C800	Sager	HP-Omni	PowerPro	Micron	Arm	Arm	Arm	Arm	Systemax	
		NP8560	XE3	III-16		N38W3				SW15-T800	
Manufacturer Rating	8	3	9	7	8	2	2	2	2	5	
Total Points	52	51	49	48	46	46	44	40	38	34	
Note: Dell says we use THER contract											

CITY OF TIGARD, OREGON PURCHASE AGREEMENT FOR

LAPTOP COMPUTERS

THIS AGREEMENT made and entered into this 10TH of October, 2001 by and between the CITY OF TIGARD, a municipal corporation of the State of Oregon, hereinafter called City, and **ESP Technologies**, hereinafter called Seller.

RECITALS

- a. Seller has submitted a bid or proposal to City for the sale of certain goods.
- b. Seller is in the business of selling certain goods and is aware of the purposes for which City will use the goods.
- c. City and Seller wish to enter into a contract under which City shall purchase the goods described in Seller's bid or proposal.

AGREEMENT: The parties agree:

1. **GOODS TO BE PROVIDED:**

City shall purchase **Laptop Computers** from Seller in accordance with:

- a. The specifications (including any addenda) attached hereto as Exhibit A and incorporated herein by this reference;
- b. The Seller's proposal dated August 30, 2001, which was accepted by the Contract Review Board on October 9, 2001 attached hereto as Exhibit B and incorporated by this reference; and
- c. The City's Standard Terms and Conditions, attached hereto as Exhibit C and incorporated by this reference.

2. **EFFECTIVE DATE AND DURATION:**

This Agreement shall become effective upon the date of execution by the City's Local Contract Review Board and shall expire, unless otherwise terminated or extended, on **October 11, 2002**. All goods under this Agreement shall be delivered and completed prior to the expiration of this Agreement. The term of the contract including renewals cannot exceed five (5) years.

3. **COMPENSATION:**

- a. City hereby agrees to pay per the pricing set forth in Exhibit A and the accepted proposal Exhibit B for the goods, including shipping and handling. The total purchase price shall be considered payment for all Sellers' obligations described in this agreement. Seller shall invoice City the purchase price upon the delivery of the goods. City shall have thirty (30) days after receipt of invoice in which to make payment. Seller shall be responsible for the payment

of all taxes associated with the sale of the goods. City is exempt from the payment of Federal Excise Tax.

- b. Seller shall promptly advise City of all reasonably available technological advances that are known or become known to Seller while this agreement is in effect which may result in the goods having added value, capacity, or usefulness when used for City's purpose. If Seller intends to provide goods incorporating technological advances and still meeting the specifications and the City's needs at no additional charge, Seller shall provide City with 45 days' notice of the proposed change. The City may require that only goods not incorporating the changes be supplied by providing written notice to seller within 5 days of receiving the notice of the proposed change. Any other changes incorporating technological advances shall only be approved as an amendment to this agreement.
- c. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. DELIVERY:

Seller shall deliver the goods no later than 10 days after receipt of City's purchase order, together with an executed copy of this Agreement. Seller agrees to provide goods as specified in Exhibit A.

Within 24 hours following delivery, City shall inspect the goods and shall notify Seller immediately of any damaged items.

No language contained in a purchase order, work order, or delivery order shall vary, amend, modify, or add terms or conditions to this Agreement under which the order is placed.

5. INSTALLATION:

The City shall install the goods purchased under this agreement.

6. TESTING AND ACCEPTANCE:

Seller shall test the goods prior to delivery. Seller's tests shall determine whether the goods meet Seller's specifications and are fit for the purpose intended. Acceptance or rejection of the goods purchased shall occur 10 days after delivery and inspection by Buyer. Failure to inspect and accept or reject goods shall neither relieve Seller from responsibility for such goods, which do not meet the requirements in this Agreement nor impose liability on Buyer.

7. RISK OF LOSS:

Risk of loss to goods in shipment (including damage, destruction, theft, or loss) shall be borne by the Seller. Risk of loss shall not pass to Buyer until the goods are delivered to and checked in at the location specified by Buyer.

8. ASSIGNMENT/DELEGATION:

Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other and any attempted assignment or transfer without the written consent of the other party shall be invalid.

9. SUBMITTING BILLS AND MAKING PAYMENTS.

All notices and bills shall be made in writing and may be given by personal delivery, mail or fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

CITY OF TIGARD

Paul de Bruyn, Director of Network Services
13125 SW Hall Blvd.
Tigard, Oregon 97223

Business Phone: 503-639-4171 Ext. 402

Business Fax: 503-639-6795

Email Address: pdb@ci.tigard.or.us

SELLER

ESP Technologies Gary Deines
Gary Deines, Account Executive
7929 SW Burns Way
Wilsonville, OR 97070

Business Phone: 503-682-4195

Business Fax: 503-682-2781

Email Address: garyd@esptek.com

10. TERMINATION

City has the right, in its sole discretion, to terminate without cause or for no cause, to termination this Agreement at any time by giving notice to Seller. If City terminates the contract pursuant to this section, it shall pay Seller for goods shipped by Seller prior to receipt by Seller of the notice of termination. City may deduct the amount of damages, if any, sustained by City due to any breach of contract or warranty by Seller. Damages for breach of contract or warranty shall be those allowed by Oregon law, reasonable and necessary attorney fees, witness fees (expert and non-expert), and other costs of litigation at trial and on appeal.

11. ACCESS TO RECORDS:

City shall have access to such books, documents, papers and records of Seller as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

12. FORCE MAJEURE:

Neither City nor Seller shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, natural disaster, war, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subseller or supplies due to such cause; provided that the parties so disabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

13. NON-DISCRIMINATION:

Seller agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Seller also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

14. WARRANTY AGAINST DEFECTS:

Seller warrants that the goods shall remain free of defects in material and workmanship for a period of one (1) year commencing the date of City's acceptance. Such defects shall include any failure of the goods to meet Seller's specifications or the description contained in Seller's product literature. If within the warranty period City discovers such a defect, Seller shall repair or replace the defective item or component free of charge. If after three attempts Seller is unable to eliminate a defect, or if Seller does not commence the warranty work within the time allowed in this paragraph, City shall have the right to return the defective item or component and, at City's option, either obtain a full refund of the purchase price of the goods or obtain a refund, in an amount to be agreed upon by the parties, of the portion of the purchase price of the goods that is allocable to the defective item or component. Seller shall commence all warranty work within 48 hours of receiving notice of the warranty claim. All warranty work shall be performed at City's facilities unless otherwise agreed by the parties. If warranty work is performed at Seller's facilities, Seller shall pay all shipping costs, including the cost of return shipment. This warranty shall apply to all repair parts furnished by Seller and all repairs performed by Seller.

15. INTELLECTUAL PROPERTY WARRANTY:

Seller warrants that none of the goods, the use thereof or any of the applications, processes or designs employed in the manufacture thereof infringes the valid claims of any letter patent, patent application, copyright, trade secret or any other property right of any third party. If as a result of any suit or proceeding alleging an infringement of any of the foregoing property rights City's use of the equipment is enjoined, Seller shall at no cost to City either obtain for City a license to use the goods or modify the goods so as to avoid the infringement without any degradation in performance. If Seller cannot obtain such a license and cannot so modify the equipment, Seller shall promptly refund to City the purchase price, less a reasonable amount for depreciation.

16. ASSIGNMENT OF MANUFACTURER'S WARRANTIES:

Seller hereby assigns all warranties of the manufacturers of components of the goods to City to the extent such warranties are assignable. In the event Seller must obtain the consent of the manufacturer or take other action before any such warranties are assignable, Seller shall do so prior to delivery.

17. INDEMNITY/HOLD HARMLESS:

Seller shall defend, indemnify and hold harmless City, City's officers, employees, agents and representatives from and against all liability, claims, demands, judgments, penalties, and causes of action of any kind or character, or other costs or expenses incidental to the investigation and defense thereof, of whatever nature, resulting from or arising out of the activities of the Seller or its subsellers, agents, or employees under this contract, except, however, that the foregoing shall not apply to liability that arises out of City's negligence.

18. INSURANCE:

Commercial General Liability Insurance: If Seller will be installing or testing the goods, or otherwise performing services on City's premises, Seller shall provide a certificate indicating that Seller has commercial general liability insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance. Coverage will include \$1,000,000 per occurrence and \$2,000,000 general annual aggregate. Said insurance shall name City as an additional insured and shall require written notice to City thirty (30) days prior to cancellation. If Seller hires a subseller to perform services on City's premises, Seller shall ensure that Seller's subseller complies with this paragraph.

Business Automobile Liability Insurance: If Seller will be delivering the goods, Seller shall provide City a certificate indicating that Seller has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000. Said insurance shall name City as an additional insured and shall require written notice to City thirty (30) days in advance of cancellation. If Seller hires a carrier to make delivery, Seller shall ensure that said carrier complies with this paragraph.

Workers' Compensation Insurance: The Seller, its subsellers, if any, and all employers providing work, labor or materials under this Contract that are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Sellers who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

Certificates of Insurance: As evidence of the insurance coverage required by the contract, the Seller shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract.

19. ATTORNEY'S FEES:

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including witness fees (expert and non-expert), attorney's fees and court costs on appeal.

20. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES

Seller shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subsellers and income tax withholding contained in ORS Chapter 279, the provisions of which are hereby made a part of this agreement.

21. CONFLICT BETWEEN TERMS:

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the terms of proposal conflicting herewith.

22. SEVERABILITY:

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

23. COMPLETE AGREEMENT:

This Agreement, including the exhibits, is intended both as a final expression of the Agreement between the parties and as a complete and exclusive statement of the terms. In the event of an inconsistency between a provision in the main body of the Agreement and a provision in the Exhibit, the provision in the main body of the Agreement shall control. In the event of an inconsistency between Exhibit A and any other exhibit, Exhibit A shall control. In the event of an inconsistency between Exhibit C and Exhibit B, Exhibit B shall control. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Seller, by the signature of its authorized representative, hereby acknowledges that Seller has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Seller has executed this Agreement on the date hereinabove first written.

CITY OF TIGARD

Approved by Tigard's Local Contract Review Board on: _____

By: Authorized City staff person letting contract

Date

SELLER

By: Company Name

Print Name & Title of Authorized Representative

Sign Name

Date

EXHIBIT 'A'

GOODS TO BE PROVIDED

IV. GENERAL INFORMATION

1. **Term of Contract:** It is the intent of the City to negotiate a three (3) year contract with an optional two (2) year extension. The term of the contract including renewals cannot exceed five (5) years. Additional years of the contract shall be determined by the City upon completion of the first year.
2. **Contract:** After the award, the contractor and the City will enter into a Purchase Agreement incorporating the terms and conditions of the ITB document and the bid response (refer to the attached sample). Vendors taking exception to any of the contract terms should indicate the same in their bid response documents or their exceptions will be deemed waived.
3. **Contracting Pricing Adjustments:** Prices shall be firm through the first year of the contract, with the following exceptions:
 - a. City shall be given immediate benefit of any price decreases.
 - b. The Contractor shall promptly notify the City of amount and effective date of any decreases.
 - c. Any decrease shall apply to any work and/or supplies requested on or after the effective date of decrease.

Should such decreased prices again increase during the term of the contract, including extensions, the City shall honor the increase if it does not exceed the original contract price.

During the term of this agreement, should Contractor enter into any contract, agreement or arrangement that provides lower prices, more favorable terms or greater benefits to any other such government unit or commercial customer, this agreement shall thereupon be deemed amended to provide the same price or prices, terms and benefits to the City. This provision applies to comparable products, supplies and services, and to purchase volumes by the City that are not less than the purchase volumes of the government unit or commercial customer that has received the lower prices, greater benefits or more favorable terms offered by Contractor to any other state or local government.

4. **Price Increases:** Pricing increases must be received at the City forty-five (45) days prior to contract extension date. Contractor shall provide documentation for price increase; failure to provide sufficient documentation shall result in rejection of increases. The City reserves the right to accept or reject any increases.
5. **Business Tax and Federal ID No.:** Immediately following award, if not obtained before, Contractor shall pay the City of Tigard Business tax fee, if applicable, and fill out a W9 Form provided to you by the City, providing Contractors Federal ID number. The above shall be completed before contract is signed.
6. **Resident Bidder:** ORS 279.25 (h) requires each bidder to indicate whether they are a resident bidder. A resident bidder means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid and has a business address in this state as defined in ORS 279.029.

As a public contracting agency, the City shall prefer goods or services that have been manufactured or produced in this state if price, fitness, availability and quality are otherwise equal.

7. **Public Records:** All bid material submitted by bidder shall become the property of the City and is public record unless otherwise specified. A bid that contains any information that is considered trade secret under ORS 192.501(2) should be segregated and clearly identified as such. This information will be kept confidential and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS 192. The above restrictions may not include cost or price information, which must be open to public inspection.
8. **Billing Requirements:** Invoices shall be sent to City of Tigard, Attn: Accounts Payable, 13125 SW Hall Blvd., Tigard, OR 97223. Payment is normally made within 30 days following the date the entire order is delivered or the date the invoice is received.
9. **Termination of Contract:** Contract may be terminated by mutual consent of both parties or by the City at its discretion with a 30 days' written notice. The City may cancel an order for goods at any time with written notice to Contractor, stating the extent and effective date of termination. If the contract is so terminated, Contractor shall be paid for goods purchased prior to date of termination.
10. **Intergovernmental Cooperative Purchasing:** Pursuant to Oregon Revised Statutes (ORS) Chapter 279.15, other public agencies may participate in the award resulting from this solicitation.

If the Contractor agrees to participate, all such participation shall be on the basis of this solicitation and the resulting award except that reasonable changes in pricing and terms may be negotiated directly between the participating agency and the contractor to accommodate differences in delivery distances and local conditions.

Each agency wishing to utilize the award of this solicitation will execute its own contract with the contractor, binding only their agency with NO liability to the City of Tigard.

The City cannot commit to purchase on behalf of any other party. Unless otherwise identified, volumes shown in this document are estimates of City of Tigard's usage. Any contracting, ordering, deliveries, approvals, billing and collections shall take place directly between Contractor and participating agency.

Please note "yes" if it meets specification, or "no" for any deviations. Any items marked "no" shall be explained in the column or on the attached "Deviations Sheet".

Meets/Exceeds Expectations

Figure 1

[illegible]

1000

1979-1980

.....

[illegible]

1000

1000

Weight:
Size:

OPTIONAL ITEMS

Carrying Bag _____

Windows 2000 _____

2. **Condition of Equipment:** Except as otherwise specified, all equipment, components, fittings and materials furnished within the context of this procurement shall be new, never before sold to any end user, and never before used except for the purpose of testing, initial assembly or "breaking in." This paragraph includes construction materials, interior finishes, mechanical/electrical equipment and all peripherals.
3. **Delivery:** Delivery must be within ten (10) working days from when Contractor receives the purchase order. Cost of delivery shall be the responsibility of the Contractor
4. **Installation of Hardware:** City shall install the computer hardware purchased under this agreement.
5. **Installation of Software:** Laptops shall be delivered with Windows 98SE or Win2000. Service Pack 1 or newer already installed as a base system. The City may request some Laptops have Windows NT4.0, Service Pack 6A or newer preinstalled for an additional cost.
6. **Warranty/Repair:** Warranty for all Laptops will be one year or three years from date of delivery. Please state on "Bid Form" if there is an additional cost for warranty periods. When the City informs a Contractor of a defective part, the Contractor shall contact the City within twenty-four hours with arrangements to rectify the defective part(s).
7. **Maintenance of Equipment:** City Network staff would be the first level of problem isolation. Once it is determined by telephone conversation with the Contractor that a component has failed, Contractor would issue an RMA for return and repair of unit. All shipping costs involved with return of units for repair shall be borne by the Contractor. Repairs or replacement of components by the City of Tigard Network Services Department shall not alter or void any warranties for equipment purchased under this contract.

The City may opt for onsite maintenance to be supplied by the Contractor. Include in bid response information on your maintenance program, costs and turn around times.

Note: Specify normal turnaround time for repair of defective units and if a response time of 48 hours is available and if it's an addition cost?

8. **Documentation:** Please include with "Bid Form" all specifications and/or supporting documentation relevant to the hardware products, which you intend to supply.
9. **Bidder Qualifications and References:** Bidder shall provide the number of years in business, annual revenue and a list of three (3) reference customers of similar size. Reference's shall include company name, contact person and phone number.

10. **Contacts:** The awarded Contractor(s) shall designate one (1) primary and one (1) backup person responsible for the Contractor's work under this contract. Contractor(s) shall provide name, phone number and email address of such persons. Contractor(s) must have an e-mail address as the point of contact with the City for the purpose of communication on a daily basis to supplement the normal voice-mail and telephone. The above information shall be kept current with the City at all times.

EXHIBIT 'B'

SELLER'S PROPOSAL

VIII. DETAILED SPECIFICATIONS

Please note "yes" if it meets specification, or "no" for any deviations. Any items marked "no" shall be explained in the column or on the attached "Deviations Sheet".

1. Minimum Laptop Specifications

Meets/Exceeds Expectations

Pentium III 750mhz or above

850 MHz

Minimum 128MB RAM expandable to 512MB

128 MB

Minimum 18GB hard drive

20G

Three spindles. The floppy drive, the hard drive, and the CD/DVD drive must all be encased within the laptop body and must all run simultaneously. No externally connected drives are acceptable.

yes DVD/CD
14.1

15" TFT Active Matrix screen

Touch pad mouse

yes

PS/2 mouse and PS/2 external keyboard plugs.

yes

Two PCMCIA slots

Only 1

USB port(s)

yes

Built in 56k fax modem

yes

Win 98SE or Win2000

2000

Built in speakers, jacks for external microphone, speakers, and line-in.

yes

Serial, parallel, and ethernet ports.

yes

External video - must be able to toggle between laptop screen, or external VGA device, or both simultaneously.

yes

Minimum 4 hours battery life. Lithium ion battery.

yes

A/C charger

yes

S-Video output port

no

Weight and physical size of unit.

Weight:

7.4

Size:

13.03 X 10.76 X 1.56

OPTIONAL ITEMS

Carrying Bag

yes

Windows 2000

yes

2. **Condition of Equipment:** Except as otherwise specified, all equipment, components, fittings and materials furnished within the context of this procurement shall be new, never before sold to any end user, and never before used except for the purpose of testing, initial assembly or "breaking in." This paragraph includes construction materials, interior finishes, mechanical/electrical equipment and all peripherals.
3. **Delivery:** Delivery must be within ten (10) working days from when Contractor receives the purchase order. Cost of delivery shall be the responsibility of the Contractor
4. **Installation of Hardware:** City shall install the computer hardware purchased under this agreement.
5. **Installation of Software:** Laptops shall be delivered with Windows 98SE or Win2000. Service Pack 1 or newer already installed as a base system. The City may request some Laptops have Windows NT4.0, Service Pack 6A or newer preinstalled for an additional cost.
6. **Warranty/Repair:** Warranty for all Laptops will be one year or three years from date of delivery. Please state on "Bid Form" if there is an additional cost for warranty periods. When the City informs a Contractor of a defective part, the Contractor shall contact the City within twenty-four hours with arrangements to rectify the defective part(s).
7. **Maintenance of Equipment:** City Network staff would be the first level of problem isolation. Once it is determined by telephone conversation with the Contractor that a component has failed, Contractor would issue an RMA for return and repair of unit. All shipping costs involved with return of units for repair shall be borne by the Contractor. Repairs or replacement of components by the City of Tigard Network Services Department shall not alter or void any warranties for equipment purchased under this contract.

The City may opt for onsite maintenance to be supplied by the Contractor. Include in bid response information on your maintenance program, costs and turn around times.

Note: Specify normal turnaround time for repair of defective units and if a response time of 48 hours is available and if it's an addition cost?

8. **Documentation:** Please include with "Bid Form" all specifications and/or supporting documentation relevant to the hardware products, which you intend to supply.
9. **Bidder Qualifications and References:** Bidder shall provide the number of years in business, annual revenue and a list of three (3) reference customers of similar size. Reference's shall include company name, contact person and phone number.

DEVIATION SHEET

State below the specification paragraph where deviation from specifications occurs and what manner it deviates.

1. Only one PCMCIA slot
2. No S-video

"BID FORM"

(1 of 2 pages)

ITB - LAPTOP COMPUTERS - CLOSE: August 21, 2001 CITY OF TIGARD

The undersigned proposes to furnish Laptop Computers at the price indicated, all in accordance with the specifications and provisions listed in this "Invitation to Bid - Laptop Computers".

DESCRIPTION

PRICE

Laptop as listed in the minimum specifications

\$ 1,944.00

Carrying Bag

\$ 50.00

Windows 2000

\$ 0

Installation of Windows NT4.0, Service Pack 6A or newer

\$ 0

GRAND TOTAL

\$ 1,994.00

Warranty

Term

Available

One year

Yes ☒ No ☐

\$ Standard

Three years

Yes ☒ No ☐

\$ 300

Maintenance

Specify normal turnaround time for repair of defective units

\$? - hourly if not warra.

3 days 5th same day

Response Time

Available

48 hours

Yes ☒ No ☐

\$? - hourly if not warrent

OPTIONS: (Laptops NOT listed in minimum specifications)

1. Laptop with the following additional options: Same as

\$ 1846

above only with 98 OS.

2. Laptop with the following additional options: Same as

\$ 2,467

above with 2000 OS, 256mb Ram,
P III 900cpu, 15 inch screen, CD rewrite,

"BID FORM" (page 2)
ITB - LAPTOP COMPUTERS - CLOSE: August 21, 2001
CITY OF TIGARD

Years in business

10

Annual Revenue

3 mil

Registered with the State of Oregon

yes

References

1. Company Name: Financial Design Group
Contact Person: Michelle
Phone Number: 503 225 9860
2. Company Name: Columbia Wire & Iron
Contact Person: Drew Park
Phone Number: 503 286-6600
3. Company Name: Mento Graphics
Contact Person: Scott Stahlberg
Phone Number: 503 685 9882

Company Name: ESP Technologies Date: 8/30/01
Contact Person: Gary Deines Phone: 503 682 4195
Title: Account Executive Fax: 503 682 2781
Address: 7929 SW Burns Way Federal ID No. 93-1035650
Wilsonville OR 97070 email: garyd@esptek.com

[Signature]
Signature of Authorized Representative
Account Executive
Title

8/30/01
Date

NON-COLLUSION AFFIDAVIT

Bid For: Laptop Computers

STATE OF Oregon

County of Clackamas

I state that I am Account Executive (title) of ESP Tech (name of firm) and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this bid.

I state that:

(1) The price(s) and amount of this bid have been arrived at independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder except as disclosed on the attached appendix.

(2) That neither the price(s) nor the amount of this bid, and neither the approximate price(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid opening.

(3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.

(4) The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.

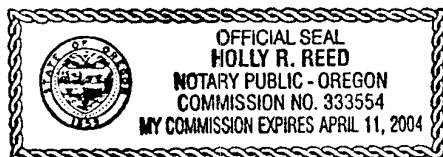
(5) ESP Tech (name of firm), its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as described in the attached appendix.

I state that ESP Tech (name of firm) understands and acknowledges that the above representations are material and important, and will be relied on by the City of Tigard in awarding the contract(s) for which this bid is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the City of Tigard of the true facts relating to the submission of bids for this contract.

[Signature]
(Authorized Signature)

ESP Technologies
(Name of Company/Position)

Sworn to and subscribed before me this 30 day of August, 2001.



Holly R. Reed
Notary Public for Oregon

My Commission Expires: April 11, 2004



ESP COMMUNICATIONS INC

Quotation

Quote: 10172

Date: 08/29/2001

Customer: Terry Muralt
City of Tigard
13125 SW Hall Blvd
Tigard OR 97223

Phones: Wk 503-639-4171

Sales Rep: Gary Deines

	Part Number	Description	Qty	Price	Extended
		XE3 WITH WINDOWS 2000 OS.			
1)	F2337KT#ABA	HEWLETT PACKARD- TOP VALUE OMN Omnibook Xe3 P3-850 20gb 128mb 14.1ft 8x Dvd 56k Enet W2	1	1,944.00	1,944.00
2)	F1606A	HEWLETT PACKARD - OMNIBOOK OPT Ballistic Nylon Case For Hp Omnibooks	1	50.00	50.00

Subtotal 1,994.00

TOTAL \$1,994.00



ESP COMMUNICATIONS INC

Quotation

Quote: 10171

Date: 08/29/2001

Customer: Terry Muralt
City of Tigard
13125 SW Hall Blvd
Tigard OR 97223

Phones: Wk 503-639-4171

Sales Rep: Gary Deines

	Part Number	Description	Qty	Price	Extended
		XE3 WITH WINDOWS 98 OS			
1)	F2337WT#ABA	HEWLETT PACKARD- TOP VALUE OMN Omnibook Xe3 P3-850 20gb 128mb 98 14.1-xga Dvd Enet 56k	1	1,846.00	1,846.00
2)	F1606A	HEWLETT PACKARD - OMNIBOOK OPT Ballistic Nylon Case For Hp Omnibooks	1	50.00	50.00

Subtotal 1,896.00

TOTAL \$1,896.00



ESP COMMUNICATIONS INC

Quotation

Quote: 10174

Date: 08/29/2001

Customer: Terry Muralt
City of Tigard
13125 SW Hall Blvd
Tigard OR 97223

Phones: Wk 503-639-4171

Sales Rep: Gary Deines

	Part Number	Description	Qty	Price	Extended
1)	F2340KT#ABA	XE3 WITH WINDOWS 2000,256MB AND 15" SCREEN. HEWLETT PACKARD- TOP VALUE OMN Omnibook Xe3 P3-900 256mb 20gb W2k 15-xga Cdrw Dvd Enet 5	1	2,467.00	2,467.00
2)	F1606A	HEWLETT PACKARD - OMNIBOOK OPT Ballistic Nylon Case For Hp Omnibooks	1	50.00	50.00

Subtotal 2,517.00

TOTAL \$2,517.00

EXHIBIT C

CITY OF TIGARD (Buyer) STANDARD TERMS AND CONDITIONS

1. **Packing & Shipment.** Deliveries shall be made as specified, without charge for boxing, crating, carting or storage. Material shall be suitably packed to ensure against damage from weather or transportation and to secure lowest transportation costs, and in accordance with the requirements of common carriers. Buyer's Order number and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each box or package shipment. Buyer's count or weight shall be conclusive on shipment not accompanied by packing lists. Unless otherwise specifically agreed on the reverse side of this Agreement, all costs of packaging and shipment are included in the purchase price and all goods will be shipped, with all costs prepaid. Risk of loss to goods in shipment (including damage, destruction, theft, or loss) shall be borne by the Seller. Risk of loss shall not pass to Buyer until the goods are delivered to and checked in at the location specified by Buyer in this Order.
2. **Warranty.** Unless otherwise agreed in writing, Seller warrants that the products ordered will conform to the specifications herein and to any drawings, samples, or other description furnished or adopted by Buyer. All products are warranted to be merchantable, to be of the highest quality design, material, and workmanship and free from defect and to be fit for purpose intended. All warranties shall survive inspection or test, acceptance and payment. Warranties shall run to Buyer, its successors, assigns and customers. Warranty period shall be (1) year from date of acceptance by Buyer.
3. **Inspection and Acceptance.** At Buyer's request, Seller shall provide a complete inspection program; satisfactory to Buyer, for Buyer's inspection of all materials, fabricating methods, equipment in process work and finished products.
If this Order provides for inspection of the work by Buyer on site during the period of manufacture, Seller agrees to provide Buyer's inspectors with reasonable facilities and assistance during such inspection. Inspection by Buyer shall not unduly delay the work. Buyer may charge Seller any additional cost incurred by Buyer if the work is not ready in accordance with the inspection schedule. Any inspection made or Waiver-of-Inspection-Notice given by Buyer will not relieve Seller from its responsibilities for delivering products and work hereunder.
Acceptance or rejection of the products shall be made up to 10 days after delivery and inspection by Buyer except as otherwise provided herein. Failure to inspect and accept or reject products shall neither relieve Seller from responsibility for such products, which do not meet the requirements herein nor impose liability on Buyer therefor.
4. **Delivery.** If Seller fails to meet the delivery schedule provided herein, Buyer may require Seller to deliver the products, or any portion thereof, in any manner commercially necessary to speed delivery, all at the Seller's sole expense. Unless otherwise agreed upon in writing by Buyer and Seller, Seller shall be required to pay the normal freight weight plus any premium rate required. Invoices covering products shipped in advance of the date specified will not be paid until after the date specified for delivery and are subject to rejection, as provided in this paragraph immediately below, if shipped too early.
Neither party shall be liable for delays or defaults due to strike, fire, windstorm, riot, natural disaster, war, civil unrest or other similar unforeseeable cause beyond the control and without the fault or negligence of the party incurring such delay. Seller shall notify Buyer in writing of the existence of such cause within five (5) days after the commencement of the delay or default giving pertinent information concerning such cause. No delivery shall be made more than seven (7) days prior to the applicable delivery date, and Buyer shall have the right to return earlier deliveries at Seller's risk and expense or charge to Seller any additional costs sustained because of the same.
5. **Buyer-Furnished Materials.** Seller shall assume all risk of loss of any material furnished by Buyer to Seller for use in performance of this Order.
6. **Taxes.** Seller shall not invoice Buyer for any taxes nor include in Seller's price any federal excise, state, or city tax or any other tax, unless Seller has first asked Buyer for Buyer's tax exemption number and it has been agreed upon between both parties that Buyer is not exempt from the tax.
7. **Changes.** Buyer may, by written order, make changes including changes in drawings or specifications. Buyer will equitably adjust any difference in cost or time for performance resulting from such change and the Order modified in writing accordingly. ANY CLAIM BY SELLER UNDER THIS CLAUSE MUST BE ASSERTED IN WRITING WITHIN 30 DAYS FROM THE DATE OF SELLER'S RECEIPT OF THE CHANGE ORDER OR THE CLAIM WILL NOT BE ALLOWED.
In the event that Buyer proposes any change prior to making such change by written order and such change will have an effect on the warranty of the products procured by this Order, Seller shall notify Buyer in writing of such effect within 10 days of receipt of such proposal.
8. **Advertising.** Seller shall not, without the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish to Buyer the products herein.
9. **Cancellation for Cause.** Buyer may cancel all or any part of the undelivered portion of this Order if Seller breaches any of the terms hereof or in the event of any of the following: Insolvency of Seller, a voluntary or involuntary petition in bankruptcy for, by or against Seller; the appointment of a receiver or trustee for Seller, or an assignment for the benefit of creditors by Seller or if Buyer has reasonable cause to believe Seller will become insolvent, file for bankruptcy, go out of business or that the products being shipped may be subject to lien, claim or attachment by a creditor of Seller. Any such cancellation under this section shall be

cancellation for cause and in the event of such cancellation, Buyer shall have the right to complete, or cause to have completed, this Order including the right to cause Seller to produce, without liability of any kind to the Buyer, proprietary items of the Seller as necessary to complete the Order. The remedies and damages in this section shall be cumulative and in addition to any other or further remedies provided at Law or in Equity, including reasonable and necessary attorney's fees and other costs of litigation.

10. Termination. City has the right, in its sole discretion, to terminate without cause or for no cause, to termination this Agreement at any time by giving notice to Seller. If City terminates the contract pursuant to this section, it shall pay Seller for goods shipped by Seller prior to receipt by Seller of the notice of termination. City may deduct the amount of damages, if any, sustained by City due to any breach of contract or warranty by Seller. Damages for breach of contract or warranty shall be those allowed by Oregon law, reasonable and necessary attorney fees, witness fees (expert and non-expert), and other costs of litigation at trial and on appeal.
11. Assignment and Subcontracting. Seller may not assign or subcontract any of its rights or obligations hereunder without the prior written approval of Buyer. Any unapproved assignment shall be void. Seller shall be fully responsible for the acts or omissions of any subcontractors and all persons employed by them, and neither the approval by Buyer of any subcontract nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and the Buyer. Buyer may assign its rights under this Order.
12. Work on Buyer's Premises. If Seller's performance of this Order involves operations by Seller on Buyer's premises, Seller shall (a) provide all necessary and sufficient safeguards and take all proper precautions against the occurrence of injury to any person or damage to any property, and shall be responsible for and shall indemnify and hold harmless Buyer, its representatives, officers, employees, and agents from any and all loss, suit, action or claim, including cost and attorney's fees, by reason of injury, including death, to any person and carry public liability and property damage insurance with limits of liability of not less than \$300,000 each, unless higher limits are required by a signed purchase agreement, with contractual liability endorsement and such insurance of employees as may be required by any workmen's compensation act or other law, regulation or ordinance which may apply in the premises. Such public liability and property damage insurance shall also cover the operation of Seller's vehicles used in the performance of Seller's operations. Any policy of insurance written in accordance with the foregoing shall be appropriately endorsed to named Buyer, it's officials, employees and agents as additional insureds, with provisions that such insurance is primary insurance with respect to their interest, and that any other insurance maintained by Buyer is excess and not contributory insurance with the insurance required hereunder, with cross-liability or severability of interest provisions, and shall further provide that the coverage provided thereby shall not be modified or discontinued or terminated except upon 30 days prior written notice to Buyer. Compliance shall be verified by Certificate of Insurance with appropriate endorsements sent to Buyer prior to Seller commencing work on Buyer's premises. Any work performed on Buyer's premises must be done pursuant to all OSHA standards, all applicable State and Federal health and safety laws, rules and regulations and all workers must be covered by workers' compensation insurance furnished through and paid for by Seller.
13. Stop Work Order. Buyer may, at any time by written order to Seller, require Seller to stop all, or any part of the work called for by this Order for a period of 90 days after the written order is delivered to Seller, and for any further period to which the parties may agree and for any other period to which the parties may have agreed or as provided in Section 4, 10, and/or 11. Within the period of 90 days or less or within any extension of that period, Buyer shall either: (a) cancel the "Stop Work Order" and direct Seller to resume work; or (b) terminate the work covered by this Order. If Buyer orders Seller to resume work, Seller shall be entitled to any equitable adjustment pursuant to Section 8 provided a claim for such an adjustment shall be submitted by Seller within 30 days after the end of the period of work stoppage.
14. Payment. Payment date and cash discount period shall be calculated from the date of Buyer's receipt of an acceptable invoice and Buyer's acceptance of the products and supporting documentation at destination.
15. Information/Data. Unless otherwise agreed in writing any designs, drawings, specifications, or other manufacturing information furnished by Buyer to Seller shall be confidential to Buyer and is furnished solely for the performance of this Order. All copies of such information shall be returned to Buyer upon completion of the Order. Any designs, drawings, specifications, or other manufacturing information delivered by Seller to Buyer may be used for any purpose whatsoever. The foregoing shall apply notwithstanding the presence or absence of any contrary legend or statement on any of such information. All business and governmental information materials containing business and governmental information provided by Buyer to Seller shall be treated as confidential.
16. Compliance with Laws and Regulations. Seller warrants that all products, goods, or work delivered and performed shall comply with all applicable Federal, State or Local Laws or Regulations including without limitation The Occupational Safety and Health Act (29 USC. Chapter 15); Federal Hazardous Material Transportation Act (49 USC. Chapter 27); Equal Employment Opportunity; E.O. 11246 and 41 CFR Sections 60-1.4 and 60-1.7; Employment of the Handicapped E.O. 11758 and 41 CFR Section 60-741-4; Utilization of Minority Enterprises E.O. 11625 and 41 CFR Subpart 1-1.13; Age Discrimination E.O. 11141, Employment of Veterans E.O. 11701 and 41 CFR Section 50-250.4 and all rules, regulations and amendments issued pursuant to the foregoing. Seller shall indemnify Buyer, its officers, employees and agents against any damages, penalties, costs or expenses incurred in connection with any alleged violation of any Federal, State or Local Law or regulating the manufacture or sale to the Buyer of any Item covered by this Order.
17. Patents, Copyrights, Trademarks. Seller warrants that no products will be furnished hereunder, which infringe or contribute to the infringement of any letters patent, copyright or trademark. Seller agrees to immediately replace at its sole cost any products

furnished hereunder which infringe or contribute to the infringement of any letters patent, copyright or trademark or to take all steps necessary at Seller's sole expense to remove such infringement.

Seller will indemnify and hold harmless Buyer, its representatives, officers, employees and agents from and against any and all costs, royalties, damages and/or expenses which may arise out of or result from, or be reasonably incurred in contesting any claims that the methods, processes or acts by the Seller or its employees or the products furnished hereunder, infringes or contributes to the infringement of any letters, patent, copyright or trademark.

18. Waiver. The failure of Buyer to enforce at any time any of the provisions of this Order or to exercise any option herein provided, shall not be a present or future waiver of such provisions, nor in any way affect the validity of this Order or any part hereof, or the right thereafter to enforce each and every such provision. The express waiver (whether one (1) or more times) of any provision, condition or requirement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.
19. Independent Contractor. Seller is an independent contractor and persons employed by Seller shall be employees of Seller and not employees of Buyer.
20. Complete Agreement. The Purchase Order and any referenced attachments constitute the complete agreement between the parties. Except as otherwise provided herein, it is subject to change only by an instrument signed in writing by both parties.
21. Acceptance by Performance. If Seller fails provide to Buyer with a signed copy of this order, but delivers product or performs the services specified in this agreement, then Seller agrees that the Seller shall be deemed to have accepted the terms and conditions of this order, as provided on both the front and this reverse side of the order. Buyer must agree any changes or modifications to this order by Seller to, in writing, or they shall not be deemed accepted by Buyer and if the Seller delivers the products nonetheless, then the original terms and conditions of this order shall govern.
22. Mandatory Mediation and Binding Arbitration. If there is a dispute concerning any of the terms, conditions or the performance of this order, then it is hereby agreed by both Buyer and Seller that the dispute shall be submitted first to non-binding mediation, to be performed by a sole mediator to be agreed upon between Buyer and Seller. If a mediator cannot be agreed upon, then the parties agree that any Circuit Court judge for the State of Oregon, County of Washington, shall be authorized to appoint a mediator for the parties.
Should the parties fail to reach an agreement through mediation, then the parties shall submit to binding arbitration, which shall be governed by the rules of the Arbitration Service of Portland, and shall be conducted within Washington County. The arbitration shall be conducted by a single arbitrator chosen by mutual agreement of the parties. If the parties are unable to agree on an arbitrator, the parties shall ask the Presiding Judge of the Circuit Court for Washington County to select the arbitrator. If the arbitrators determine that one party is the prevailing party, then the losing party shall be required to pay all fees and costs of the arbitration. On the other hand, if the arbitrators determine that neither party is to be considered the prevailing party, then the fees and costs of the arbitration shall be divided equally between the parties. The parties knowingly and voluntarily waive their rights to have their dispute tried and adjudicated by a judge or jury. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, then the other party shall be entitled to costs, including reasonable attorney fees, for having to compel arbitration or defend or enforce the award. The parties agree to defend the arbitrator and any individual engaged in the administration of an arbitration proceeding from any subpoenas or claims from third parties arising out of this order or the arbitration.
23. Jurisdiction and Attorney Fees. This order shall be governed and construed according to the laws of the State of Oregon. If a dispute shall arise under this order necessitating the services of an attorney, then the prevailing party shall be entitled to collect from the losing party all of its/his/her reasonable costs and attorney fees, either in arbitration (if awarded by the arbitrator as provided above), or by a court before which any matter concerning this order may be heard, both at trial and on appeal.
24. Neutral Interpretation. This order constitutes the product of negotiations between the parties hereto. Any enforcement hereof will be interpreted in a neutral manner and not more strongly for or against any party based upon the source of draftsmanship.
25. Severability. Nothing contained herein shall be construed to require the commission of any act contrary to law, and wherever there is any conflict between the provisions contained herein and any present or future statute, law, ordinance or regulation contrary to which to the parties have no legal right to contract, the latter shall prevail. The provision of this Agreement, which is affected, shall be curtailed and limited only to the extent necessary to bring it within the requirement of the law.
26. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday or such holiday, then that period shall be extended to include the next day which is not a Saturday, Sunday or holiday.
Notice. Any notice required or permitted to be given by either party to the other shall be deemed to have been given when sent via telecopy, overnight air courier, or deposited in the United States mail certified, return receipt requested, with first class postage prepaid, addressed as indicated on the front of this order, or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Notice shall also be considered effective upon delivery if personally delivered.
27. Conditions of Supplying a Public Agency. Where applicable, seller must make payment promptly as due to persons supplying Seller labor or materials for the execution of the work provided by this order. Seller must pay all contributions or amounts due from Seller to the industrial accident fund incurred in the performance of this order. Seller shall not permit any lien or claim to be filed or prosecuted against Buyer or any subdivision of Buyer on account of any labor or material to be furnished. Seller further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

28. Payment of Claims by Public Officers. In the event that Seller fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Seller or a subcontractor of Seller by any person in connection with the performance of this order when such claim becomes due, then the proper officer or officers representing the Buyer hereunder may pay such claim to the person furnishing the labor or services and charge the amount of the payment against the funds due or to become due to the Seller by reason of this order. The payment of a claim in the manner authorized by this provision shall not relieve the Seller or any of the Seller's surety from obligations with respect to any unpaid claims.
29. Health Care Benefits for Seller's Employees. If this order involves public service, then Seller must provide health care benefits to all employees who are performing services previously performed by public employees performing similar duties under this order.
30. Hours of Labor. If labor is performed under this order, then no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, or emergency or where the public policy absolutely requires it, and in such cases, except cases of contracts for personal services as defined in ORS 279.050, the labor shall be paid at least time and a half for all overtime in excess of eight (8) hours a day and for all work performed on Saturday and on any legal holidays as specified in ORS 279.334. In cases of contracts for personal services as defined in ORS 279.050, any labor shall be paid at least time and a half for all hours worked in excess of forty (40) hours in any one week, except for those individuals excluded under ORS 653.010 to 653.260 or under 29 USC SS 201-209.
31. Medical Care and Workers' Compensation. Seller shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury, to the employees of such Seller, of all sums which the Seller agrees to pay for such services and all moneys and sums which the Seller collected or deducted from the wages of the employees pursuant to any law, contractor agreement for the purpose of providing or paying for such service.

AGENDA ITEM # _____
FOR AGENDA OF October 9, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE A resolution approving a Supplemental Budget for FY 2001-02 for the Parks SDC Fund and the Underground Utility Fund.

PREPARED BY: Craig Prosser DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should the Council adopt a Supplemental Budget for the City of Tigard?

STAFF RECOMMENDATION

Adopt the Supplemental Budget

INFORMATION SUMMARY

The City of Tigard's budget for FY 2001-02 was adopted in June 2001. Since that time, staff has identified changes that need to be made to two City funds in sufficient magnitude that the City must adopt a Supplemental Budget.

Under state law, jurisdictions may not increase the resources in any of their funds (except for recognizing gifts, grants or donations) without first adopting a Supplemental Budget. State Law establishes that any increases to resources in any one fund of more than 10% must first be approved by the Budget Committee following public notice and public hearing.

The City of Tigard Supplemental Budget will affect two City funds: Parks SDC and Underground Utility.

Parks SDC Fund

The Parks SDC Fund Budget as originally adopted included \$821,764 of systems development charge funds for the construction of Phase I of the Cook Park Master Plan and two other projects. The Cook Park Master Plan calls for the installation of additional parking, sports fields, trails, restrooms and other amenities in Cook Park. Because of limited funds available, this master plan was to be implemented over a three to four year period. The extended construction period would have prolonged disruption in the park, increased construction costs due to inflation, and delayed the time at which Tigard citizens would enjoy the benefits of these improvements. In addition, this project required the use of almost all of the Parks SDC money available, which limited the amount of work that could be done in other City parks.

In July 2001, the City was awarded a grant of \$250,000 by the Oregon State Parks Department for the Cook Park Project, which allowed an acceleration of the construction schedule. In addition, the City applied for a loan from the Oregon Economic and Community Development Department (OECD) to cover the portion of project costs not covered by the grant.

On August 2, 2001, OECDD approved the City's application for the \$2.29 million loan. The term of the loan will be 10 years and the interest rate will be set in December 2001 following a state bond sale. OECDD expects the final interest rate will be less than 4.5%. Loan repayments will be made from Parks SDC money. Final loan documents will be submitted to the City for approval later this fall.

The Supplemental Budget recognizes the OECDD loan as a revenue to the Parks SDC Fund and appropriates that portion that is likely to be spent in FY 2001-02. This action does not change the original appropriation of City funds to allow that money to be used for debt service or other parks projects as needed.

Underground Utility Fund

The Underground Utility Fund contains payments from developers used to place utilities (electrical and telephone) underground. These projects are carried out in conjunction with street improvement projects paid for by other funds. The FY 2001-02 Budget included \$40,000 for placing utilities underground. The budget was based on the assumption that projects underway in FY 2000-01 would be completed before the end of the fiscal year.

Last fiscal year (FY 2000-01) the Underground Utility Fund included money to pay for undergrounding utilities as part of the Walnut St. and 121st Ave. Intersection Improvements. That project was substantially completed during FY 2000-01, but in August, the City received a bill for an additional \$41,000 of work performed by Washington County. The FY 2001-02 Budget assumed that all work on this project would be completed and paid for last fiscal year. It is necessary to adjust the budget in the Underground Utility Fund to allow for this payment in addition to the work planned for FY 2001-02. The Supplemental Budget recognizes the actual FY 2001-02 Beginning Fund balance (which is \$28,007 higher than estimated in the Budget), plus \$10,000 of other revenues from miscellaneous fees and payments. These additional resources, in combination with the fund contingency will be sufficient to make this final payment of the Walnut & 121st Ave. Project.

Budget Committee Hearing

Notice of a hearing before the City of Tigard Budget Committee and of this October 9 hearing was published on September 6, 2001. The Budget Committee met on September 18, held a public hearing, and approved the Supplemental Budget with an amendment to the portion for the Parks SDC Fund to adjust the resources to the amount that will actually be received in FY 2001-02 (rather than the full loan amount.) The attached resolution reflects the Supplemental Budget as approved by the Budget Committee.

OTHER ALTERNATIVES CONSIDERED

Do not approve the supplemental budget. If this action is not approved, however, the Cook Park Project will not be implemented sooner. In addition, the City will have to use funds budgeted in the Underground Utility Fund for the final payment on the Walnut & 121st Ave. project and would be unable to undertake any further undergrounding projects in FY 2001-02.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

Resolution

FISCAL NOTES

Parks SDC Fund – Increases resources and requirements by \$1,698,742.

Underground Utility Fund – Increases resources and requirements by \$39,547.

CITY OF TIGARD, OREGON

RESOLUTION NO. 01-

A RESOLUTION APPROVING A SUPPLEMENTAL BUDGET FOR FY 2001-02 FOR THE PARKS SDC FUND AND THE UNDERGROUND UTILITY FUND.

WHEREAS, it is necessary to increase resources and requirements in the Parks SDC Fund to recognize a loan for the Cook Parks Master Plan Project from the Oregon Economic and Community Development Department and the Underground Utility Fund to make final payment on the Walnut and 121st Ave. Project in FY 2001-02, and

WHEREAS, under Oregon State law, such action requires approval of a Supplemental Budget following publication of public notice, public hearings, and approval of the City's Budget Committee, and

WHEREAS, public notice of the Supplemental Budget was published in the Tigard Times and the Daily Journal of Commerce on September 6, 2001, and

WHEREAS, the Budget Committee held a public hearing and approved the Supplemental Budget on September 18, 2001, and

WHEREAS, the City Council held a public hearing on the Supplemental Budget on October 9, 2001.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The FY 2001-02 Adopted Budget of the City of Tigard is hereby amended as shown in Attachment A to this resolution.

PASSED: This ____ day of ____ 2001.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

RESOLUTION NO. 01-__

Attachment A
FY 2001-02
Supplemental Budget # 1

FY 2001-02 Revised Budget	Supplemental Budget # 1	FY 2001-02 Revised Budget
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Parks SDC Fund

Resources

Beginning Fund Balance	395,331	266,895	662,226
Property Taxes	0		0
Grants	250,000		250,000
Interagency Revenues	0		0
Development Fees & Charges	502,322		502,322
Utility Fees and Charges	0		0
Miscellaneous Fees and Charges	0		0
Fines and Forfeitures	0		0
Franchise Fees and Business Tax	0		0
Interest Earnings	9,600		9,600
Bond Proceeds/Principal	0	1,431,847	1,431,847
Other Revenues	0		0
Transfers In from Other Funds	0		0
Total	\$1,157,253	\$1,698,742	\$2,855,995

Requirements

Community Service Program	0		0
Public Works Program	0		0
Development Services Program	0		0
Policy & Administration Program	0		0
General Government	0		0
Program Expenditures Total	\$0	\$0	\$0
Debt Service	\$0		\$0
Capital Improvements	\$1,071,764	\$1,431,847	\$2,503,611
Transfers to Other Funds	\$0		\$0
Contingency	\$80,000	\$266,895	\$346,895
Total Requirements	\$1,151,764	\$1,698,742	\$2,850,506
Ending Fund Balance	5,489	0	5,489
Grand Total	\$1,157,253	\$1,698,742	\$2,855,995

Underground Utility Fund

Resources

Beginning Fund Balance	296,962	28,007	324,969
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Attachment A
FY 2001-02
Supplemental Budget # 1

	FY 2001-02 Revised Budget	Supplemental Budget # 1	FY 2001-02 Revised Budget
Property Taxes	0		0
Grants	0		0
Interagency Revenues	0		0
Development Fees & Charges	58,000		58,000
Utility Fees and Charges	0		0
Miscellaneous Fees and Charges	0		0
Fines and Forfeitures	0		0
Franchise Fees and Business Tax	0		0
Interest Earnings	16,300	1,540	17,840
Bond Proceeds/Principal	0		0
Other Revenues	0	10,000	10,000
Transfers In from Other Funds	0		0
Total	\$371,262	\$39,547	\$410,809
Requirements			
Community Service Program	0		0
Public Works Program	0		0
Development Services Program	0		0
Policy & Administration Program	0		0
General Government	0		0
Program Expenditures Total	\$0	\$0	\$0
Debt Service	\$0		\$0
Capital Improvements	\$40,000	\$45,547	\$85,547
Transfers to Other Funds	\$0		\$0
Contingency	\$6,000	(\$6,000)	\$0
Total Requirements	\$46,000	\$39,547	\$85,547
Ending Fund Balance	325,262		325,262
Grand Total	\$371,262	\$39,547	\$410,809

AGENDA ITEM # _____
FOR AGENDA OF October 9, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Tigard Beyond Tomorrow - Vision Update

PREPARED BY: L. Mills & Liz Newton DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Hear about recent progress on Tigard Beyond Tomorrow efforts.

STAFF RECOMMENDATION

Receive update of recent progress on Tigard Beyond Tomorrow efforts.

INFORMATION SUMMARY

In 1996, the Tigard City Council expressed concern that the community's future was too important to leave to chance and directed a process to pull resources together to determine long-term goals for Tigard. Residents, government professionals, business people, and community group leaders volunteered to work together to determine the community's future direction. Adopting the name "Tigard Beyond Tomorrow," they established a process that defined a vision for our community and identified resources for implementing that vision through partnership of individuals and organizations.

Each year since 1996, members of our community have reviewed and updated the strategies and action plans to accomplish the goals of "Tigard Beyond Tomorrow." This annual review is critical to ensure we stay on track with the changing times and desires of our community.

"Tigard Beyond Tomorrow" is alive and well! The goals and strategies developed by this community to shape our future are considered when the City Council considers a decision, as City staff plan and develop work plans each year, and as our community partners make decisions for the future.

The purpose of this presentation is to celebrate the City's 40th Birthday by honoring the vision of our community and its partners that are actively shaping our future. There are six target areas of activity being monitored through the community's vision. The staff liaison for each area will briefly share accomplishments from the last few months. The targeted areas for community goals are:

- Community Character & Quality of Life
- Growth & Growth Management
- Public Safety
- Schools & Education
- Transportation & Traffic
- Urban & Public Services

OTHER ALTERNATIVES CONSIDERED

N/A

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

N/A

FISCAL NOTES

N/A

AGENDA ITEM # _____
FOR AGENDA OF 10/9/01

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Tigard Municipal Code Chapter 2.16 Code Amendment

PREPARED BY: Judge O'Brien & N. Robinson DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

The City has embarked on a plan to update its Municipal Code. Amendment of Chapter 2.16 is the first step in updating the codes relevant to the functioning of the City's municipal court.

STAFF RECOMMENDATION

Update Chapter 2.16 as recommended

INFORMATION SUMMARY

With the exception of a 1999 amendment to grant the Municipal Judge authority to issue warrants, Tigard Municipal Code Chapter 2.16 has not been updated since the 1980's. The changes proposed in section 2.16.030 will update the reference to the relevant state statute and affirm that a pro tempore municipal judge has the same powers as the municipal judge. This power was previously granted in 2.16.050.

The amendments in section 2.16.050 move the language related to the pro tempore municipal judge into section 2.16.030. Additionally, the language proposed regarding the additional powers specifically conferred by the code is recommended to allow the judge, in his capacity as hearings officer, to impose penalties which exceed those granted by statute to a justice of the peace.

OTHER ALTERNATIVES CONSIDERED

Leave the code as it currently is.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

None

ATTACHMENT LIST

An ordinance adopting the changes in language proposed for chapter 2.16.

FISCAL NOTES

There will be no costs associated with the amendments.

CITY OF TIGARD, OREGON

ORDINANCE NO. 01-

AN ORDINANCE AMENDING CHAPTER 2.16 TO UPDATE STATUTORY REFERENCES AND CLARIFY THE POWERS OF THE MUNICIPAL JUDGE AND PRO TEMPORE MUNICIPAL JUDGE

WHEREAS, the statutory reference in chapter 2.16 of the Tigard Municipal Code needs to be updated to reflect current state law; and

WHEREAS, the duties of the pro tempore municipal judge may be more accurately defined; and

WHEREAS, the authority of the municipal judge to impose penalties when acting as a civil infraction hearings officer need to be clarified;

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Chapter 2.16 MUNICIPAL COURT is amended as indicated in the attached Exhibit "A". Deleted working is struck through and added wording is underlined.

SECTION : This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By _____ vote of all Council members present after being read by number and title only, this ____ day of _____, 2001.

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this ____ day of _____, 2001.

James E. Griffith, Mayor

Approved as to form:

City Attorney

Date

EXHIBIT A

2.16.030 Pro tempore municipal judge.

The office of pro tempore municipal judge of the municipal court for the city is created. One or more pro tempore municipal judges may be incumbent at any given time. The holder(s) of the office shall be subject to appointment and removal in like manner as herein provided with respect to the municipal judge. A pro tempore municipal judge shall act only when the municipal judge is unable to perform his duties by reason of absence from the city, illness, vacation, disqualification as provided by ORS 221.353 ~~§221.347~~, or as specifically determined by the court administrator, and in such circumstances the court personnel will assign one of the pro tempore judges to serve in lieu of the municipal judge.

The pro tempore municipal judge shall have the same powers and be compensated in the same manner as the municipal judge. (Ord. 87-36 §1, 1987; Ord. 85-26 §1(part), 1985).

2.16.050 Powers of municipal judge.

The municipal judge when acting as such, ~~and the pro tempore judge designated to act as such when so acting,~~ shall perform all the duties and have all the inherent and statutory powers of a justice of the peace within the jurisdictional limits of the office of municipal judge, and such additional powers as may be specifically conferred by the Tigard Municipal Code, ~~and shall have~~ including the power to issue search warrants and warrants to enter property and abate civil infractions. (Ord. 99-01; Ord. 85-26 §1(part), 1985).

AGENDA ITEM # _____
FOR AGENDA OF October 9, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Ordinance amending Tigard Municipal Code Sections 12.10.180 and adding new sections 12.10.300, 12.10.310, 12.10.320, 12.10.330, and 12.10.340.

PREPARED BY: Dennis Koellermeier DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Shall the City Council approve this ordinance which amends the existing Tigard Municipal Code Section 12.10 and resolution amending the "Rules, Rates and Regulations for Water Service Handbook" clarifying the process to be used to curtail water usage when water shortages occur or are anticipated.

STAFF RECOMMENDATION

Staff recommends approval of this ordinance and resolution. The Intergovernmental Water Board considered these changes at their regular meeting on July 11, 2001 and recommended approval.

INFORMATION SUMMARY

This is a housekeeping measure, in that the existing provisions are outdated and do not reflect the current practices and procedures that Tigard would need to follow in the case of a water use restriction imposed upon us by one of our suppliers, or as a regional decision imposed by the State. While we do not foresee this happening this year, staff believes it is prudent to have provisions in place, so that we would be able to act quickly.

Additionally, these amendments contain the provision allowing the Public Works Director to initiate various limitations in water use. This provision was added to allow for a fast response to water supply problems, which would most likely be needed in the case of a major facility failure such as a supply line rupture, pump station failure due to fire or earthquake, flood damage, etc. Please note that any restrictions imposed by the Public Works Director are automatically reviewed by the Tigard City Council at their next meeting.

Tigard and most other suburban purveyors using Portland water are legally obligated by contract to follow Portland's lead in water curtailment issues. This ordinance would accomplish that in that the levels of prohibition are consistent with the City of Portland curtailment plan.

The attached memorandum from the City Attorney's office explains why their recommendation is to amend both the Tigard Municipal Code and the Rules, Rates and Regulations for the Water Service Handbook. The issue we are really trying to work through is providing equal treatment to all customers in the area governed by the Intergovernmental Water Board. Passage of the attached ordinance and resolution accomplishes that.

OTHER ALTERNATIVES CONSIDERED

No action on this issue would leave Tigard with an ordinance provision that would most likely require passage of this ordinance or something similar to it in an emergency situation.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Not applicable

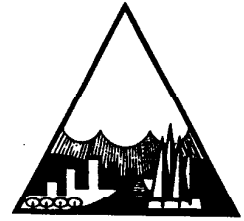
ATTACHMENT LIST

- Memo dated June 29, 2001 to the Intergovernmental Water Board
- Memorandum from the City Attorney's office
- Copy of the ordinance
- Copy of the resolution.


FISCAL NOTES

Passage of this ordinance and resolution has no fiscal impact.

MEMORANDUM



TO: Intergovernmental Water Board

FROM: Dennis Koellermeier, Utility Manager 

RE: Water Use Restrictions

DATE: June 29, 2001

The purpose of this memo is to brief the Board on current efforts to update the existing provisions in the Tigard Municipal Code and the *Rules, Rates and Regulations for Water Service Handbook* as those two documents relate to water use restrictions.

This is a housekeeping measure, in that the existing provisions are outdated and do not reflect the current practices and procedures that Tigard would most likely need to follow in the case of a water use restriction imposed upon us by one of our suppliers, or as a regional decision imposed by the State. While we do not foresee this happening this summer, staff believes it is prudent to have provisions in place, so that we would be able to act quickly.

Additionally, these amendments contain the provision allowing the Public Works Director to initiate various limitations in water use. This provision was added to allow for a fast response to water supply problem, which would most likely be needed in the case of a major facility failure such as a supply line rupture, pump station failure due to fire or earthquake, flood damage, etc. Please note that any restriction imposed by the Public Works Director is automatically reviewed by the Tigard City Council at their next meeting.

Tigard and most other suburban purveyors using Portland water are legally obligated by contract to follow Portland's lead in water curtailment issues. This also makes sense at the public information level. Since most of the major media coverage is focused on Portland, and not the surrounding areas, experience shows us that the Portland message gets applied all, in that many customers do not understand where their water comes from.

The attached memorandum from the City Attorney's office explains why their recommendation is to amend both the Tigard Municipal Code and the *Rules, Rates and Regulations for water Service Handbook*. The issue we are really trying to work through is providing equal treatment to all customers in the area governed by the Intergovernmental Water Board. Passage of the attached ordinance and resolution accomplishes that.

Recommendation: The IWB review the attached ordinance and resolution and pass a motion indicating their support of these amendments to the City Council.

RAMIS
CREW
CORRIGAN &
BACHRACH, LLP

ATTORNEYS AT LAW

1727 N.W. Hoyt Street
Portland, Oregon 97209

(503) 222-4402
Fax: (503) 243-2944

MEMORANDUM

TO: Dennis Koellermeier, City of Tigard

FROM: Timothy V. Ramis, Gary Firestone, City Attorney's Office

DATE: June 11, 2001

RE: Water Restrictions

BACKGROUND

An ordinance has been prepared for the City of Tigard to expand its Municipal Code provisions relating to restrictions on water use in drought and other emergency situations. The City also provides water to other local jurisdictions under a series of intergovernmental agreements.

ISSUES

Will adoption of the code provisions by the City of Tigard be binding on those who receive water from Tigard but live in one of the other jurisdictions?

Is there any other means by which the City can impose restrictions on residents of other areas?

Does Tigard have any additional authority to restrict water to other jurisdictions?

Given that the City of Tigard can change the regulations applicable throughout the water service territory, should the City also amend its municipal code?

ANSWER

The TMC provisions will apply only within the City of Tigard.

The Tigard City Council can include similar restrictions in the *Rules, Rates and Regulations*

Memorandum re: Water Restrictions

June 11, 2001

Page 2

for Water Service Handbook. Any new regulations must first be reviewed by the IWB. The regulations, once adopted, are binding though the various intergovernmental agreements.

If for some reason the regulations are not adopted as part of the *Rules, Rates and Regulations for Water Service Handbook* or are ineffective, the IGAs among the parties allow the City of Tigard to restrict water, so long as each jurisdiction shares equally in any reduction.

The City should probably amend its code. Most citizens will refer to the Municipal Code. While its authority to adopt regulations is clearly stated in the IGAs with the various jurisdictions, the City's authority to adopt code provisions governing those within the City is even clearer.

ANALYSIS

With limited exceptions, a municipal code only applies within the municipality that adopts the code. The exceptions are when state law grants the municipality extraterritorial powers or when an intergovernmental agreement transfers responsibility from one government to another. The IGAs between Tigard and the various other jurisdictions receiving water from Tigard do not give Tigard the authority to impose these types of jurisdiction through its municipal code. Therefore, any restrictions imposed through the Tigard Municipal Code will apply only within the City.

The City does have the authority to impose restrictions on those who are served by Tigard but are in other jurisdictions. The intergovernmental agreements with the other entities all provide that the Tigard City Council, after review by the IWB, may modify, alter or repeal the *Rules Rates and Regulations for Water Service Handbook* that provides regulations for all those receiving water in any of the jurisdictions. IGA Section 8. The City Council therefore has authority to amend the existing *Rules Rates and Regulations* to include restrictions similar to those included in the draft ordinance.

In addition to its authority to adopt regulations restricting use, the IGAs also give the City the authority to restrict water. IGA Section 7A provides: "Tigard will provide water to properties and customers in all jurisdictions equally. If circumstances require water restrictions, each jurisdiction shall share equally." This provision allows Tigard to restrict water, so long as the restrictions are shared equally among the districts.

Even though the City Council can amend the regulations, which would be effective both within Tigard and in the other jurisdictions, it is advisable to amend the Municipal Code to contain the same restrictions as the *Rules Rates and Regulations*. More people have access to the Municipal Code and it is the first place most people would look to determine what rules apply. It is also

Memorandum re: Water Restrictions**June 11, 2001****Page 3**

appropriate to have important rules of general applicability, especially those that authorize additional action by the City Council, within the Municipal Code. While the City has authority under the IGAs to adopt regulations, its authority under its charter to adopt code provisions would remove any reasonable doubt as to the legality of an emergency water curtailment within the City.

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CITY OF TIGARD, OREGON

ORDINANCE NO. 01-____

AN ORDINANCE AMENDING SECTION 12.10.180 AND ADDING NEW SECTIONS 12.10.300, 12.10.310, 12.10.320, 12.10.330 AND 12.10.340 OF THE TIGARD MUNICIPAL CODE

WHEREAS, the public interest is served by the City's ability to limit water usage during an emergency; and

WHEREAS, amendments to the Municipal Code would clarify the process to be used to curtail water usage when water shortages occur or are anticipated;

NOW, THEREFORE, the City of Tigard ordains as follows:

SECTION 1: Section 12.10.180 of the Tigard Municipal Code is amended to read as follows:

Limitation on the Use of Water

- (a) Limitation on the use of water as to hours, purpose, or manner may be prescribed from time to time by order of the Public Works Director, based on a finding that the limitation is reasonable given the available and projected water supply and demand. Any order under this section shall be reviewed by the City Council at its next session following issuance of the order. The City Council may affirm, withdraw or amend the order.
- (b) The Public Works Director, the City Manager, or the City Council may call for voluntary reductions in water use, including but not limited to voluntary rotational watering plans.

SECTION 2: A new Section 12.10.300 is added to the Tigard Municipal Code to read as follows:

Findings and Declaration of a Water Emergency.

Upon a finding that the municipal water supply system is incapable of providing an adequate water supply for normal usage due to a drought, system failure, or any other event, the City Council may declare a water emergency and require that water usage must be curtailed. The declaration shall include the effective date, the reason for the declaration,

and the level of prohibition declared. The City Council may include an estimated time for review or revocation of the declaration.

SECTION 3: A new Section 12.10.310 is added to the Tigard Municipal Code to read as follows:

Levels of Prohibition.

- (1) Level I – Limited. The following activities or actions are prohibited under a Level 1 declaration:
 - (a) Watering, sprinkling or irrigating lawn, grass or turf; exceptions:
 - (i) New lawn, grass or turf that has been seeded or sodded 90 days prior to declaration of a water shortage may be watered as necessary until established;
 - (ii) High-use athletic fields that are used for organized play.
 - (iii) If the Level 1 declaration so provides, a mandatory rotational watering plan may be imposed rather than an absolute prohibition on watering.
 - (b) Watering, sprinkling or irrigating flowers, plants, shrubbery, ground cover, crops, vegetation, or trees except from 6:00 p.m. to 10:00 a.m.
 - (c) Washing, wetting down or sweeping with water, sidewalks walkways, driveways, parking lots, open ground or other hard surfaced areas; exceptions:
 - (i) Where there is a demonstratable need in order to meet public health and safety requirements, such as: to alleviate immediate fire or sanitation hazards; for dust control to meet air quality requirements mandated by the Oregon Department of Environmental Quality;
 - (ii) Power washing of buildings, roofs and homes prior to painting, repair, remodeling or reconstruction, and not solely for aesthetic purposes.
 - (d) Washing trucks, cars, trailers, tractors and other land vehicles or boats or other water-borne vehicles, except by commercial establishments or fleet washing facilities which recycle or reuse the water in their washing processes, or by bucket and hose with a shut-off mechanism; exception:
 - (i) Where the health, safety and welfare of the public is contingent upon frequent vehicle cleaning, such as: to clean garbage trucks and vehicles that transport food and other perishables, or otherwise required by law. Owners/operators of these vehicles are encouraged

- to utilize establishments that recycle or reuse the water in their washing process.
- (e) Cleaning, filling or maintaining decorative water features, natural or manmade, including but not limited to, fountains, lakes, ponds and streams, unless the water is recirculated through the decorative water feature. Water features that do not include continuous or constant inflowing water are not included.
 - (f) Wasting water by leaving unattended hoses running.
 - (g) Water line testing and flushing in connection with construction projects; exception:
 - (i) Testing and flushing of critical water facilities
 - (h) Other actions that the City Council determines should be restricted, consistent with a Level I situation, including any restriction or curtailment imposed on the city by water suppliers or applicable law, regulation or order.
- (2) Level II – Moderate. The following activities or actions are prohibited under a Level II declaration.
- (a) Actions and activities prohibited in a Level I situation.
 - (b) Watering of any lawn, grass or turf, regardless of age or usage.
 - (c) Watering, sprinkling, or irrigating flowers, plants, shrubbery, groundcover, crops, vegetation or trees.
 - (d) Washing of vehicles other than in establishments that recycle.
 - (e) Power washing of buildings, regardless of purpose, is prohibited.
 - (f) Any additional actions that the City Council determines should be restricted consistent with a Level II situation.
- (3) Level III – Severe. In addition to the restrictions imposed under Level I and Level II, the City Council may impose any other restriction on water use or activities that may require the need for water supplies, consistent with the City water supply contracts. Activities that may require the need for water supplies include fireworks displays and other events that create a risk of fire. In imposing a Level III restriction, the City Council shall consider any restriction recommended by the Public Works Director or by any Fire District serving the City.

SECTION 4: A new Section 12.10.320 is added to the Tigard Municipal Code to read as follows:

Enforcement.

- (1) Warning. The City shall send a letter of warning for each violation of a curtailment restriction if no previous letter of warning has been sent to the person responsible for the violation. The letter of warning shall specify the violation, may require compliance measures, and shall be served upon the person responsible for the violation. Service may be

in person, by office or substitute service, or by certified or registered mail, return receipt requested.

- (2) Civil Infraction. After the person responsible for the violation has received a warning letter, any subsequent violation shall be treated as a civil infraction under Chapter 1.16.

SECTION 5: A new Section 12.10.330 is added to the Tigard Municipal Code and reads as follows:

Penalties.

- (1) First Violation – Warning letter.
- (2) Second Violation of the same type – Class 3 infraction \$50
- (3) Third Violation of the same type – Class 2 infraction \$100
- (4) Fourth and subsequent violations of the same type – Class 1 infraction \$250.

SECTION 6: A new Section 12.10.340 is added to the Tigard Municipal Code to read as follows:

Water Shut-Off.

After the third violation of a curtailment restriction, the Public Works Director may order that the water service to the location where the violation has occurred shall be shut-off or reduced. A shut-off notice shall be posted on the property at least 48 hours prior to the scheduled shut-off or reduction. The shut-off notice shall specify the reasons for the shut-off or reduction. Any person wishing to avoid a shut-off must provide the Public Works Director with evidence that the shut-off will create a health or safety risk. All shut-offs imposed under this section shall be temporary, not to exceed thirty (30) days, provided the applicable charges are paid prior to reconnection. The reconnection charge and, if applicable, the meter disconnection charge imposed under Section 12.03.030 shall be paid before the reconnection.

SECTION 7: A new Section 12.10.350 is added to the Tigard Municipal Code to read as follows:

Definition

As used in Sections 12.10.180 through 12.10.350:

“Rotational watering plan” means a plan for watering lawns and/or gardens on specific days or at specific times and not on other days or times. A rotational watering plan may be voluntary or mandatory.

SECTION 8: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City recorder.

PASSED: By _____ votes of all Council members present after being read by number and title only, this ____ day of _____, 2001.

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this ____ day of _____, 2001.

James Griffith, Mayor

Approved as to form:

City Attorney

Date

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CITY OF TIGARD, OREGON

RESOLUTION NO. 01-____

A RESOLUTION AMENDING SECTION 19 OF THE RULES, RATES AND REGULATIONS GOVERNING WATER SERVICE HANDBOOK

WHEREAS, the public interest is served by the ability to limit water usage during an emergency

WHEREAS, amendments to the Rules, Rates and Regulations Governing Water Service Handbook would clarify the process to be used to curtail water usage when water shortages occur or are anticipated;

WHEREAS, the Tigard City Council has the authority under intergovernmental agreements with the Tigard Water District, the City of Durham, and King City to amend the Rules, Rates and Regulations Governing Water Service Handbook;

WHEREAS, the Intergovernmental Water Board has reviewed proposed amendments to the Rules, Rates and Regulations Governing Water Service Handbook that clarify the process to be used to curtail water in times of shortages and supports the proposed amendments.

NOW THEREFORE, BE IT RESOLVED by the Tigard City Council that::

Section 19 of the Rules, Rates and Regulations Governing Water Service Handbook is amended to read as follows:

A. Limitation on the Use of Water

- (a) Limitation on the use of water as to hours, purpose, or manner may be prescribed from time to time by order of the City of Tigard Public Works Director, based on a finding that the limitation is reasonable given the available and projected water supply and demand. Any order under this section shall be reviewed by the Tigard City Council at its next session following issuance of the order. The Tigard City Council may affirm, withdraw or amend the order.
- (b) The Tigard Public Works Director, the Tigard City Manager, or the Tigard City Council may call for voluntary reductions in water use, including but not limited to voluntary rotational watering plans.

B. Findings and Declaration of a Water Emergency.

Upon a finding that the municipal water supply system is incapable of providing an adequate water supply for normal usage due to a drought, system failure, or any other event, the Tigard City Council may declare a water emergency and require that water usage must be curtailed. The declaration shall include the effective date, the reason for the declaration, and the level of prohibition declared. The Tigard City Council may include an estimated time for review or revocation of the declaration. City of Tigard staff and the Tigard City Council shall inform the Intergovernmental Water Board of potential water emergencies and, when possible, shall seek and consider advice and recommendations of the IWB.

C. Levels of Prohibition.

(1) Level I – Limited. The following activities or actions are prohibited under a Level 1 declaration:

- (a) Watering, sprinkling or irrigating lawn, grass or turf; exceptions:
 - (i) New lawn, grass or turf that has been seeded or sodded 90 days prior to declaration of a water shortage may be watered as necessary until established;
 - (ii) High-use athletic fields that are used for organized play.
 - (iii) If the Level 1 declaration so provides, a mandatory rotational watering plan may be imposed rather than an absolute prohibition on watering.
- (b) Watering, sprinkling or irrigating flowers, plants, shrubbery, ground cover, crops, vegetation, or trees except from 6:00 p.m. to 10:00 a.m.
- (c) Washing, wetting down or sweeping with water, sidewalks walkways, driveways, parking lots, open ground or other hard surfaced areas; exceptions:
 - (i) Where there is a demonstratable need in order to meet public health and safety requirements, such as: to alleviate immediate fire or sanitation hazards; for dust control to meet air quality requirements mandated by the Oregon Department of Environmental Quality;

- (ii) Power washing of buildings, roofs and homes prior to painting, repair, remodeling or reconstruction, and not solely for aesthetic purposes.
 - (d) Washing trucks, cars, trailers, tractors and other land vehicles or boats or other water-borne vehicles, except by commercial establishments or fleet washing facilities which recycle or reuse the water in their washing processes, or by bucket and hose with a shut-off mechanism; exception:
 - (i) Where the health, safety and welfare of the public is contingent upon frequent vehicle cleaning, such as: to clean garbage trucks and vehicles that transport food and other perishables, or otherwise required by law. Owners/operators of these vehicles are encouraged to utilize establishments that recycle or reuse the water in their washing process.
 - (e) Cleaning, filling or maintaining decorative water features, natural or manmade, including but not limited to, fountains, lakes, ponds and streams, unless the water is recirculated through the decorative water feature. Water features that do not include continuous or constant inflowing water are not included.
 - (f) Wasting water by leaving unattended hoses running.
 - (g) Water line testing and flushing in connection with construction projects; exception:
 - (i) Testing and flushing of critical water facilities
 - (h) Other actions that the Tigard City Council determines should be restricted, consistent with a Level I situation, including any restriction or curtailment imposed on the city by water suppliers or applicable law, regulation or order.
- (2) Level II – Moderate. The following activities or actions are prohibited under a Level II declaration.
- (a) Actions and activities prohibited in a Level I situation.
 - (b) Watering of any lawn, grass or turf, regardless of age or usage.
 - (c) Watering, sprinkling, or irrigating flowers, plants, shrubbery, groundcover, crops, vegetation or trees.
 - (d) Washing of vehicles other than in establishments that recycle.

(e) Power washing of buildings, regardless of purpose, is prohibited.

(f) Any additional actions that the Tigard City Council determines should be restricted consistent with a Level II situation.

(3) Level III – Severe. In addition to the restrictions imposed under Level I and Level II, the Tigard City Council may impose any other restriction on water use or activities that may require the need for water supplies, consistent with water supply contracts. Activities that may require the need for water supplies include fireworks displays and other events that create a risk of fire. In imposing a Level III restriction, the Tigard City Council shall consider any restriction recommended by the Public Works Director, by any Fire District serving the City, by the IWB, or by any of the jurisdictions to which the City of Tigard provides water.

D. Enforcement.

(1) Warning. The City of Tigard shall send a letter of warning for each violation of a curtailment restriction if no previous letter of warning has been sent to the person responsible for the violation. The letter of warning shall specify the violation, may require compliance measures, and shall be served upon the person responsible for the violation. Service may be in person, by office or substitute service, or by certified or registered mail, return receipt requested.

E. Penalties.

(1) First Violation – Warning letter.
(2) Subsequent Violations of the same type – To be determined by city or district within violator is located.

F. Water Shut-Off.

After the third violation of a curtailment restriction, the Tigard Public Works Director may order that the water service to the location where the violation has occurred shall be shut-off or reduced. A shut-off notice shall be posted on the property at least 48 hours prior to the scheduled shut-off or reduction. The shut-off notice shall specify the reasons for the shut-off or reduction. Any person wishing to avoid a shut-off must provide the Tigard Public Works Director with evidence that the shut-off will create a health or safety risk. All shut-offs imposed under this section shall be temporary, not to exceed thirty (30) days, provided the applicable charges are paid prior to reconnection. The reconnection charge and any

applicable meter disconnection charge imposed shall be paid before the reconnection.

G. Definition

As used in this section:

“Rotational watering plan” means a plan for watering lawns and/or gardens on specific days or at specific times and not on other days or times. A rotational watering plan may be voluntary or mandatory.

APPROVED: By Tigard City Council this ____ day of _____, 2001.

James Griffith, Mayor

ATTEST:

City Recorder – City of Tigard

AGENDA ITEM # _____
FOR AGENDA OF 10/09/01

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE TMC - Police Reserves

PREPARED BY: Ronald D. Goodpaster DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should TMC 2.28.20 be changed to eliminate the maximum age limitation of 60 years of age for police reserve officer.

STAFF RECOMMENDATION

Staff recommends that the change to the ordinance be approved.

INFORMATION SUMMARY

Currently the TMC states that members of the police reserve shall be no more than 60 years of age. This is clearly discriminatory and should be eliminated.

OTHER ALTERNATIVES CONSIDERED

No other alternatives considered.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Not related.

ATTACHMENTS

Ordinance amending Section TMC 2.28.20
Current TMC 2.28.20

FISCAL NOTES

There are no additional costs attached to this change.

CITY OF TIGARD, OREGON

ORDINANCE NO. 01-_____

AN ORDINANCE AMENDING SECTION 2.28 OF THE TIGARD MUNICIPAL CODE CHANGING SUBSECTION 2.28.020 TO REMOVE THE REQUIREMENT THAT RESERVE OFFICERS MUST BE UNDER THE AGE OF 60.

WHEREAS, Sub section 2.28.020 - Membership - Revocation - Qualifications - of the Tigard Municipal Code currently states "Members shall not be less than twenty-one years of age and not more than sixty years of age," and

WHEREAS, restricting the age to less than 60 years of age is discriminatory,

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Sub section 2.28.020 is amended to read as follows: "Members shall not be less than twenty-one years of age."

SECTION 2: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2001.

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2001.

James E. Griffith, Mayor

Approved as to form:

City Attorney

Date

TIGARD MUNICIPAL CODE

Chapter 2.28 POLICE RESERVE.

Sections:

- 2.28.010 Creation--Membership.
- 2.28.020 Membership--Revocation--Qualifications.
- 2.28.030 Equipment and uniform requirements.
- 2.28.040 Duty restrictions.
- 2.28.050 Subject to call.
- 2.28.060 Jurisdiction of police department.
- 2.28.070 City official cannot be member.
- 2.28.080 City property to be returned upon membership termination.
- 2.28.090 Appointment of lieutenant.
- 2.28.100 Compensation provisions and contract services.
- 2.28.110 Powers and privileges of regular police while serving on active duty.

2.28.010 Creation--Membership.

There is created an organization of police officers in the city to be known as the "Tigard police reserve," to be composed of a voluntary membership of not to exceed fifteen members who shall be under the jurisdiction and subject to duty on call of the chief of police. (Ord. 68-49 §1, 1968).

2.28.020 Membership--Revocation--Qualifications.

Membership in the police reserve shall be for an indefinite term. Such membership may be revoked at any time by the chief of police for the good of the city or may be canceled at any time by a member on written notification to the chief of police. Members shall be not less than twenty-one years of age ~~and not more than sixty years of age~~. Their applications will be approved and confirmed by the chief of police, and each

member must take the oath of office as prescribed by the city charter. (Ord. 68-49 §2, 1968).

2.28.030 Equipment and uniform requirements.

The city shall furnish and maintain uniforms for reserve officers. All reserves will be required to purchase their own protection vest, weapon, duty belt and equipment. The protection vest will be replaced when needed, as determined by the chief of police, at city expense. (Ord. 92-32 §1, 1992; Ord. 68-49 §3, 1968).

2.28.040 Duty restrictions.

Except when on duty by call of the chief of police or other authority of the city, the members of the police reserve shall perform no police functions other than those granted to all citizens of the state of Oregon by the laws thereof. (Ord. 68-49 §4, 1968).

2.28.050 Subject to call.

Members of the police reserve shall at all times be subject to call and the performance of such police duties as may be assigned to them and shall report for duty at such intervals and times that shall be fixed or determined by order of the chief of police. (Ord. 68-49 §5, 1968).

2.28.060 Jurisdiction of police department.

Members of the organization shall be subject to the orders of the regularly constituted authority of the city and shall be directly responsible to the chief of police and under his jurisdiction and that of the other officers of the police department of the city and of the police reserve. Members found guilty of insubordination or conduct unbecoming an officer, or who shall have been convicted of any crime involving moral turpitude, or who for any reason shall be regarded as unsatisfactory as a

TIGARD MUNICIPAL CODE

member of such organization, may be dismissed from service in the police reserve by the chief of police. (Ord. 68-49 §6, 1968).

2.28.070 City official cannot be member.

No official of the city, whether appointed or elected, may be a member of the police reserve. (Ord. 68-49 §7, 1968).

2.28.080 City property to be returned upon membership termination.

Upon termination of membership in the police reserve for whatever reason, all property of the city in the possession of the retiring member shall be surrendered and delivered to such official as the chief of police shall designate to receive the same. (Ord. 68-49 §8, 1968).

2.28.090 Appointment of lieutenant.

There may be appointed by the chief of police, a lieutenant of the police reserve who shall not be an active member of the regular police force of the city, but shall be a member in good standing of the police reserve and shall, subject to regulations imposed by the chief of police, be the executive officer of the police reserve. Additional lieutenants and sergeants may from time to time be appointed by the chief of police from members of the reserve to serve at his pleasure. (Ord. 68-49 §9, 1968).

2.28.100 Compensation provisions and contract services.

(a) Members of the police reserve shall receive no compensation for their membership therein or while on duty as such unless the chief of police declares an emergency and then they would be paid based on police officer rate.

(b) However, subsection (a) of this section shall not prohibit the city from contracting with

public or private entities for services provided by reserve police officers including, but not limited to, providing security and directing traffic, and shall charge base police officer rate for such services.

(c) While on duty as a reserve officer, each individual will be covered by the city workers' compensation insurance for work-related injuries and under the city's liability policy as long as they are acting within the scope and responsibility of their position, unless prohibited by a separate agreement. (Ord. 92-32 §2, 1992: Ord. 68-49 §10, 1968).

2.28.110 Powers and privileges of regular police while serving on active duty.

When serving on active duty at the call of the chief of police or other authority of the city, members of the police reserve shall be entitled to all the powers and privileges of a regular police officer of the city and subject to all the duties and regulations and responsibilities thereof. The responsibility of citizens to assist police officers in pursuit of their duties shall apply to the members of the police reserve while on active duty in the same manner as to any other police officer. (Ord. 68-49 §11, 1968).■

AGENDA ITEM # _____
FOR AGENDA OF 10/09/01

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE TMC - Permit Issuance Conditions (oversize loads)

PREPARED BY: Ronald D. Goodpaster DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should TMC 10.50 be amended to read “no move shall begin before 9:00 AM on weekdays and must be completed by 3:00 PM.”

STAFF RECOMMENDATION

Staff recommends that the change to the ordinance be approved.

INFORMATION SUMMARY

Currently the ordinance states that no move shall take place during the periods of 7:00 AM through 9:00 AM Monday through Friday, without approval of the Chief of Police. The recommendation is that the language be changed to specifically state that no move shall begin before 9:00 AM on weekdays and must be completed by 3:00 PM. The part missing primarily is the completion time of 3:00 PM. This is just before the busy rush hour traffic starts. This would be extremely beneficial to us and the general motoring public regarding navigating the streets during extremely congested and busy times. Weekends are exempt from the above 7:00 AM to 9:00 AM time restrictions, but the move must be completed by 3:00 PM.

OTHER ALTERNATIVES CONSIDERED

No other alternatives considered.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

The Tigard Beyond Tomorrow Public Safety strategy would cover this area.

ATTACHMENTS

Ordinance amending Section TMC 10.50.080 (6)
Current TMC 10.50

FISCAL NOTES

There are no additional costs attached to this change.

CITY OF TIGARD, OREGON

ORDINANCE NO. 01-_____

AN ORDINANCE AMENDING SECTION 10.50.080 OF THE TIGARD MUNICIPAL CODE CHANGING SUB SECTION 10.50.080 (6) PROHIBITING MOVEMENT OF OVERSIZE LOADS ON CITY STREETS BEFORE 9:00 AM AND AFTER 3:00 PM.

WHEREAS, Subsection 10.50.080 (6) the Tigard Municipal Code currently states "no move shall take place during the periods of seven a.m. through nine a.m., without approval of the chief of police", and

WHEREAS, movement of oversize loads after three p.m. causes severe traffic congestion at rush hour times on weekdays, and

WHEREAS, public safety vehicles cannot move effectively through severely congested streets, and

WHEREAS, restricting movement of oversize loads will prevent this cause of traffic congestion,

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Sub section 10-50.080 (6) is amended to read as follows: No movement shall begin before nine a.m. on weekdays and must be completed by three p.m.

SECTION 2: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2001.

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2001.

James E. Griffith, Mayor

Approved as to form:

City Attorney

Date

ORDINANCE No. 01-__

TIGARD MUNICIPAL CODE

Chapter 10.50 MOVING OF OVERSIZE LOADS

Sections:

- 10.50.010 Title.
- 10.50.020 Definitions.
- 10.50.030 Permit required.
- 10.50.040 Permit application--Fee.
- 10.50.050 Permit for moving or relocating a building onto a lot.
- 10.50.060 Protection of public and private property and utilities.
- 10.50.070 Certificate of insurance.
- 10.50.080 Permit issuance conditions.
- 10.50.090 Permit contents.
- 10.50.100 Permit revocation.
- 10.50.110 Liability.
- 10.50.120 Protection of streets and property.
- 10.50.130 Project to continue uninterrupted.
- 10.50.140 Cleanup.
- 10.50.150 State highway/county road use.
- 10.50.160 Moving oversize loads on same property.
- 10.50.170 Violation--Penalty.

10.50.010 Title.

This chapter shall be known as the "moving of oversize loads ordinance" and may also be referred to herein as "this chapter." (Ord. 90-18 §1(part), 1990)

10.50.020 Definitions.

For the purposes of this chapter, the following mean:

(1) Building. "Building" means any structure used or intended for sheltering any use or occupancy.

(2) Building Official. "Building official"

means the designee or designees appointed by the director of community development who is responsible for the building inspections and enforcement of the building code.

(3) City Engineer. "City engineer" means the city engineer or the city engineer's designee.

(4) Street. "Street" means any highway, road, street or alley as defined in ORS 487.005(1) and (8).

(5) Structure. "Structure" means that which is built or constructed, an edifice or building of any kind, or piece of work artificially built up or composed of parts joined together in some definite manner.

(6) Chief of Police. "Chief of police" means the designee appointed by the city administrator who is responsible for the administration of the police department and may also be referred to herein as "Chief."

(7) Oversize Load. "Oversize load" means any building, structure or commodity which is to be moved along any city street upon a flatbed truck, trailer, dollies or similar vehicles, which has a loaded width exceeding eight feet and/or a loaded length exceeding fifty feet total, and/or a loaded height exceeding fourteen feet pursuant to ORS 818.080. (Ord. 90-18 §1(part), 1990)

10.50.030 Permit required.

(a) No person shall move an oversize load across or along a street without first applying for and obtaining a permit under this chapter.

(b) No person shall move an oversize load across or along a street in violation of a provision of this chapter or of the provisions of the permit issued under this chapter. (Ord. 90-18 §1(part), 1990)

TIGARD MUNICIPAL CODE

10.50.040 Permit application--Fee.

(a) Application for a permit to move an oversize load shall be made to the building official on forms provided by the building official and shall include the following information:

(1) The name and address of a person who owns the oversize load;

(2) The name and address of a person engaged to move the oversize load;

(3) The location from which the oversize load is proposed to be moved;

(4) The proposed new site of the oversize load and its zoning classification (if in the city);

(5) The proposed route for moving the oversize load;

(6) The dimensions, type of construction and approximate age of the oversize load;

(7) The use or purpose for which the oversize load was designed;

(8) The use or purpose to be made of the oversize load at its new location (if in the city);

(9) The proposed moving date and hours of moving;

(10) Any additional information the building official considers necessary for a fair determination of whether the permit should be issued.

(b) In situations where the city's design review standards apply, the applicant shall also make application and submit all necessary

information for design review approval.

(c) An application shall be signed by the owner of the oversize load to be moved or by the person engaged to move the building.

(d) A fee of ten dollars shall be paid prior to the issuance of a permit. Should it be necessary for the city to provide any assistance in the moving of an oversize load, the applicant shall pay an amount equal to the cost of labor and/or materials, or any other cost incurred by the city. These fees, pursuant to this section may be amended by the city council by resolution. (Ord. 90-18 §1(part), 1990)

10.50.050 Permit for moving or relocating a building onto a lot.

The movement or relocation of any building or structure (which would otherwise require the issuance of a building permit), within or into the city, to be placed on a lot within the city, shall in addition to the provisions of this chapter, comply with Chapter 14.20. (Ord. 90-18 §1(part), 1990)

10.50.060 Protection of public and private property and utilities.

(a) The issuance of an oversize load permit is not an approval to remove, alter, interfere or endanger any public or private property, or utility without first having obtained in writing, the permission of the property owner(s), utility, or public entity to do so.

(b) The applicant shall have made arrangements to the satisfaction of the owner(s), utility or public entity for protecting the installations or property, paying for whatever damage the moving causes them, and for reimbursing the owner(s), utility or public entity for any costs of removal and reinstallation of the property that the move necessitates. (Ord. 90-18 §1(part), 1990)

TIGARD MUNICIPAL CODE

10.50.070 Certificate of insurance.

A permit shall not be issued until the applicant furnishes proof of liability insurance with a surety company authorized to do business in this state, for the purposes of moving oversize loads, in an amount and form approved by the building official. (Ord. 90-18 §1(part), 1990)

10.50.080 Permit issuance conditions.

The building official shall issue the permit subject to any necessary conditions if:

(1) The application complies with the requirements of this chapter;

(2) The moving can be accomplished without damage to property, or in case of damage to the property, it is consented to by the owner of the property or is to be paid for to the owner's satisfaction;

(3) The building at its new site, if within the city, will conform to the requirements of the community development code;

(4) All requirements of the building code ordinance (Chapter 14.04) have been complied with;

(5) The applicant shall be responsible for notifying the police department, fire department, and all other affected agencies not less than that required by the agency, but not less than forty-eight hours prior to commencement of the move;

(6) No move shall ~~take place during the periods of seven a.m. through nine a.m., begin before nine a.m. on weekdays and must be completed by three p.m. on all days, without approval of the chief of police.~~ (Ord. 90-18 §1(part), 1990)

10.50.090 Permit contents.

The permit shall specify:

(1) The route for moving the oversize load;

(2) The dates and times within which the moving is to be completed;

(3) Whatever additional conditions the building official considers necessary to satisfy ordinance requirements, to minimize the obstruction of traffic to protect property, and to protect the public safety and welfare. (Ord. 90-18 §1(part), 1990).

10.50.100 Permit revocation.

The building official may refuse to issue a permit or may revoke a permit issued under this chapter if:

(1) The permittee violates or cannot meet a requirement of the permit or a section of this chapter;

(2) Grounds, such as a misstatement of fact exist for revocation, suspension or refusal to issue the permit. (Ord. 90-18 §1(part), 1990).

10.50.110 Liability.

The permit shall not constitute an authorization for damaging property. The permit shall not constitute a defense against any liability the permittee incurs for personal injury or property damage caused by the moving. (Ord. 90-18 §1(part), 1990)

10.50.120 Protection of streets and property.

Equipment used to move oversize loads along or across the public streets of the city shall be equipped with pneumatic tires, which shall be the only part of the equipment to come in to contact with the surfaces of the streets, except

TIGARD MUNICIPAL CODE

planking as required by the city engineer. The city engineer may require the permittee to proceed on planking of specified dimensions when the city engineer considers the planking necessary to prevent damage to a public street or other property. (Ord. 90-18 §1(part), 1990)

10.50.130 Project to continue uninterrupted.

Once an oversize load has been moved onto a public street under a permit authorized by this chapter, the person moving the oversize load shall continue with the moving project without interruption until it is completed, except as the permit for the moving of the oversize load specifically allows to the contrary. (Ord. 90-18 §1(part), 1990)

10.50.140 Cleanup.

A person moving an oversize load under a permit authorized by this chapter shall promptly remove from the public streets and private property all litter produced by the moving. (Ord. 90-18 §1(part), 1990)

10.50.150 State highway/county road use.

The building official may waive any of the requirements of this chapter regarding oversize loads to be moved through the city upon a county road or state highway from and to points outside the city limits if:

(1) Movement will be made pursuant to a permit issued by the appropriate state agency;

(2) Notice of the proposed movement and a copy of the permit is submitted to the building official before the movement; and

(3) The building official is satisfied that adequate precautions have been taken to protect the public safety and welfare. (Ord. 90-18 §1(part), 1990)

TIGARD MUNICIPAL CODE

10.50.160 Moving oversize loads on same property.

Section 10.50.030 shall not apply when an oversize load is moved on the same or private property, or along a private street not controlled or maintained by the city, except that Section 10.50.050 shall apply in all cases. (Ord. 90-18 §1(part), 1990)

10.50.170 Violation--Penalty.

Violation of this chapter (except for Section 10.50.050) shall constitute a Class I infraction and shall be processed in accordance with the civil infractions ordinance, codified in Chapter 1.16 of this code. (Ord. 90-18 §1(part), 1990)8 ■

AGENDA ITEM # _____
FOR AGENDA OF October 9, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Ordinance Amending Chapter 14.20 Moving of Buildings of the Tigard Municipal Code

PREPARED BY: Gary Lampella DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

An Ordinance amending Chapter 14.20 Moving of Buildings of the Tigard Municipal Code so it corresponds with the definitions found in Chapter 10.50 Moving of Oversize Loads.

STAFF RECOMMENDATION

Approve the Ordinance as shown in "Attachment 1".

INFORMATION SUMMARY

This is in conjunction with the ordinance change of Chapter 10.50 submitted by the Police Department. Moving of Oversize Loads ties in with Chapter 14.20 Moving of Buildings. In reviewing both chapters, it was found that the definitions were inconsistent with each other. The definition for "Building" in Chapter 14.20 was the definition for "Oversize Load" in Chapter 10.50, and there was no definition in 14.20 for "Structure" or "Oversize Load." The definition for "Building" was therefore changed in 14.20 to be the same as 10.50 and new definitions for "Structure" and "Oversize Load" were added.

OTHER ALTERNATIVES CONSIDERED

None

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

Attachment 1 - Proposed Ordinance and amended Chapter 14.20 of the TMC

FISCAL NOTES

N/A

CITY OF TIGARD, OREGON

ORDINANCE NO. 01-_____

AN ORDINANCE AMENDING CHAPTER 14.20 MOVING OF BUILDINGS

WHEREAS, THE DEFINITIONS IN CHAPTER 14.20 MOVING OF BUILDINGS WERE INCONSISTENT WITH CHAPTER 10.50 MOVING OF OVERSIZE LOADS; AND

WHEREAS, THE LACK OF CONSISTENCY PROVED TO BE DETRIMENTAL TO ENFORCEMENT OF THIS CHAPTER,

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: SECTION 14.20.020 OF THE TIGARD MUNICIPAL CODE SHALL BE AMENDED AS SHOWN IN "EXHIBIT A".

SECTION 2 : This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2001.

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2001.

James E. Griffith, Mayor

Approved as to form:

City Attorney

Date

TIGARD MUNICIPAL CODE

Strikeouts are deleted language and bold underline is new language.

Chapter 14.20 MOVING OF BUILDINGS

Sections:

14.20.010	Title.
14.20.020	Definitions.
14.20.030	Permit required.
14.20.040	Permit application--Fee.
14.20.050	Plans required for permit.
14.20.060	Protection of public and private property and utilities.
14.20.070	Performance assurance.
14.20.080	Permit issuance conditions.
14.20.090	Permit revocation.
14.20.100	Liability.
14.20.110	Cleanup.
14.20.120	Violation--Penalty.

14.20.010 Title.

This chapter shall be known as the "moving of buildings ordinance" and may also be referred to herein as "this chapter." (Ord. 90-17 §1(part), 1990)

14.20.020 Definitions.

For the purposes of this chapter, the following mean:

(1) Building. "Building" means a ~~building that exceeds eight feet in width, or as loaded for moving, extends upward more than fourteen feet from the ground, or exceeds fifty feet in length pursuant to ORS 818.080.~~ any structure used or intended for sheltering any use or occupancy.

(2) Building Official. "Building official" means the designee or designees appointed by the director of community development who is responsible for the building inspections and enforcement of the building code.

(3) City Engineer. "City engineer" means the city engineer or the city engineer's designee responsible for enforcing this chapter.

(4) Oversize Load. "Oversize load" means any building, structure or commodity which is to be moved along any city street upon a flatbed truck, trailer, dollies or similar vehicles, which has a loaded width exceeding eight feet and/or a loaded length exceeding fifty feet total, and/or a loaded height exceeding fourteen feet pursuant to ORS 818.080. (Ord. 90-18 §1(part), 1990)

(5) Street. "Street" means any highway, road, street, or alley as defined in ORS 487.005(1) and (8). (Ord. 90-17 §1(part), 1990)

(6) Structure. "Structure" means that which is built or constructed, an edifice or building of any kind, or piece of work artificially built up or composed of parts joined together in some definite manner.

14.20.030 Permit required.

(a) No person shall move any building within or into the city, to be placed on a lot, without first applying for and obtaining a permit under this chapter.

(b) No person shall move a building across or along a public street or way without first obtaining a permit to move an oversize load as regulated in Chapter 10.50. (Ord. 90-17 §1(part), 1990)

14.20.040 Permit application--Fee.

(a) Application for a permit to move a building on or onto a lot shall be made to the building official on forms provided by the building official and shall include the following information:

TIGARD MUNICIPAL CODE

(1) The name and address of a person who owns the building;

(2) The name and address of a person engaged to move the building;

(3) The location from which the building is proposed to be moved;

(4) The proposed new site of the building and its zoning classification;

(5) The dimensions, type of construction, and approximate age of the building;

(6) The use or purpose for which the building was designed;

(7) The use or purpose to be made of the building at its new location;

(8) The proposed moving date and hours of moving;

(9) Any additional information the building official considers necessary for a fair determination of whether the permit should be issued.

(b) In situations where the city's design review standards apply, the applicant shall also make application and submit all necessary information for design review approval.

(c) An application shall be signed by the owner of the building to be moved or by the person engaged to move the building.

(d) The permit shall not be issued until the applicant pays a permit fee to defray the costs of issuing the permit. The amount of the fee shall be set pursuant to the state building code fee schedule.

(e) All other applicable development fees and charges shall be paid prior to issuance of

the permit. (Ord. 90-17 §1(part), 1990)

14.20.050 Plans required for permit.

A minimum of two sets of plans shall be submitted with each application for a building permit. The plans shall be drawn to scale and shall indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of the building code and other relevant laws, ordinances and regulations. (Ord. 90-17 §1(part), 1990)

14.20.060 Protection of public and private property and utilities.

(a) The issuance of a permit to move a building is not an approval to remove, alter, interfere, or endanger any public or private property or utility without first having obtained in writing, the permission of the property owner(s), utility or public entity to do so.

(b) The applicant shall have made arrangements to the satisfaction of the owner(s), utility or public entity for protecting the installations or property, paying for whatever damage the moving causes them, and for reimbursing the owner(s), utility or public entity for any costs of removal and reinstallation of the property that the move necessitates. (Ord. 90-17 §1(part), 1990)

14.20.070 Performance assurance.

(a) Performance assurance shall be furnished to the city in the form of a bond executed by the applicant with a surety company authorized to do business in this state and approved as to form and amount by the building official, or a cash deposit with the city in an amount approved by the building official. The performance assurance shall guarantee that the applicant shall, within three months after the building has been moved onto the property, have it placed and anchored on a permanent foundation

TIGARD MUNICIPAL CODE

system, and within six months of moving the building onto the property, have all construction on the building completed and ready for occupancy in accordance with building and zoning regulations.

(b) Failure to comply with subsection (a) of this section will result in forfeiture of the bond or cash deposit, and the city will use the funds to complete whatever work is necessary to bring the building into conformance with applicable codes. Should there be insufficient funds to complete the work necessary, to bring the building into conformance with applicable codes, and the building official determines the building is a dangerous building as described in Chapter 14.16, the building official may choose to demolish the building to abate the violation.

(c) The building official may extend the completion date up to an additional six months, where the applicant has requested an extension in writing, and the building official determines there is due cause for granting the request, and no hazard exists.

(d) No building shall be moved on or onto a lot in the city for the purpose of storage of the building. (Ord. 90-17 §1(part), 1990)

14.20.080 Permit issuance conditions.

The building official shall issue the permit subject to any necessary conditions if:

(1) The application complies with the requirements of this chapter;

(2) The moving can be accomplished without damage to property, or in case of damage to the property, it is consented to by the owner of the property or is to be paid for to the owner's satisfaction;

(3) The building at its new site, will conform to the requirements of the community

development code;

(4) All requirements of the building code ordinance (Chapter 14.04 of this code) have been complied with. (Ord. 90-17 §1(part), 1990)

14.20.090 Permit revocation.

The building official may refuse to issue a permit or may revoke a permit issued under this chapter if:

(1) The permittee violates or cannot meet a requirement of the permit or a section of this chapter; or

(2) Grounds, such as a misstatement of fact exist for revocation, suspension or refusal to issue the permit. (Ord. 90-17 §1(part), 1990)

14.20.100 Liability.

The permit shall not constitute an authorization for damaging property. The permit shall not constitute a defense against any liability the permittee incurs for personal injury or property damage caused by the moving. (Ord. 90-17 §1(part), 1990)

14.20.110 Cleanup.

A person moving a building under a permit authorized by this chapter shall promptly remove from the public streets and private property all litter produced by the moving. (Ord. 90-17 §1(part), 1990)

14.20.120 Violation--Penalty.

Violation of this chapter shall constitute a Class I civil infraction and shall be processed in accordance with the civil infractions ordinance, codified in Chapter 1.16 of this code. (Ord. 90-17 §1(part), 1990) ■

AGENDA ITEM # _____
FOR AGENDA OF October 9, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Consider an Ordinance Amending or Adding Sections to Chapters 1 and 2 of the Tigard Municipal Code

PREPARED BY: C. Wheatley DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Consider an ordinance to amend or add sections to Chapters 1 and 2 of the Tigard Municipal Code.

STAFF RECOMMENDATION

Approve the proposed ordinance.

INFORMATION SUMMARY

On July 17, 2001, City Recorder Cathy Wheatley reviewed with the City Council proposed changes for several sections of Chapters 1 and 2 of the Tigard Municipal Code.

Please see the attached memorandum from City Recorder Wheatley outlining the recommendations for amending or adding sections to the Tigard Municipal Code as a result of Council discussion and direction on July 17.

OTHER ALTERNATIVES CONSIDERED

Suggest additional amendments to the proposed ordinance.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

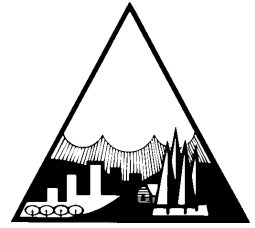
ATTACHMENT LIST

- A. Memorandum from City Recorder Wheatley to the Mayor and City Council dated September 21, 2001.
- B. Proposed Ordinance and Exhibit A.

FISCAL NOTES

N/A

MEMORANDUM



TO: Honorable Mayor & City Council

FROM: Cathy Wheatley, City Recorder

RE: Revisions to Chapters 1 and 2 of the Tigard Municipal Code

DATE: September 21, 2001

The attached proposed Ordinance and Exhibit A are submitted for City Council consideration.

Council, at its July 17, 2001, workshop meeting discussed the proposed changes to Chapters 1 and 2 of the Tigard Municipal Code to update and add certain sections.

Here is a summary of the changes shown in Exhibit A to the proposed Ordinance:

- Chapter 1.01.010 cites the official name of Tigard's codified ordinances as the "Tigard Municipal Code" (TMC) and provides language that outlines the current practice of updating the code by the City Recorder.
- Chapter 1.01.080 is a new section that allows the City Recorder to edit the TMC within prescribed parameters.
- Chapter 1.12.040 adds language setting a filing deadline for initiative petitions. Currently, initiative petitions can be kept "open" indefinitely unless a deadline is established.

I talked with representatives from the Secretary of State's Election Division about guidelines for establishing a deadline for initiative petitions and was directed to the City of Salem's Municipal Code. Salem has a 100-day process for initiative petitions. I also checked with the Washington County Elections Division and learned that Washington County has a 90-day process in place. Therefore, I recommend that we use the 90-day process to be consistent with our county. Attorney Gary Firestone assisted in writing this new language.

- Chapter 2.56.010 changes language as discussed by the City Council on July 17 relating to the appointment and removal of the City Recorder. The proposed changes have the following effect: updates the title of City Administrator to City Manager and states that the City Recorder is appointed and removed upon the advice of the City Manager and the consent of the majority of council. Language was removed that referred to the incumbent City Recorder since Loreen Mills was the incumbent at the time this was written and this provision is no longer necessary.

- Chapter 2.60.010 changes language as discussed by the City Council on July 17 relating to the appointment and removal of the City Attorney. The language was changed so that the city attorney is appointed and removed with the consent of the majority of council rather than stating that appointment is made by the mayor.

I:\ADM\CATHY\COUNCIL\MEMO - CHANGES TO CHAP 1 AND 2 TMC.DOC

CITY OF TIGARD, OREGON

ORDINANCE NO. 01-_____

AN ORDINANCE AMENDING TITLES 1 AND 2 OF THE TIGARD MUNICIPAL CODE BY ADDING NEW SECTIONS AND AMENDING EXISTING SECTIONS PERTAINING TO GENERAL GOVERNMENT AND ADMINISTRATION AND PERSONNEL

WHEREAS, the Tigard City Council has determined that certain sections of the Tigard Municipal Code (TMC) are to be amended or new sections are to be added so that the TMC is internally consistent and reflects the intent of the Council; and

WHEREAS, Chapter 1.01 should cite the official name and purpose of the TMC; and

WHEREAS, Chapter 1.01 should authorize the City Recorder to edit the TMC within prescribed parameters;

WHEREAS, Section 1.01.060 needs revision to remove unnecessary language relating to the Constitutionality of the TMC;

WHEREAS, the Council finds that the lack of a deadline for collecting signatures on initiative petitions leads to an abuse of the process, allowing petitions to continue to circulate long after some of the petition signers have ceased to be registered voters within the City and that a need for a time limit for collecting signatures is therefore needed;

WHEREAS, Chapter 1.56.010 contains unnecessary language relating to the appointment and removal of the City Recorder; and

WHEREAS, Chapter 2.60.010 contains unnecessary language relating to the appointment and removal of the City Attorney and does not properly describe the responsibility of the Council;.

WHEREAS, the amendments proposed by this ordinance to Tigard Municipal Code Sections 1.01.010, 1.01.060, 2.56.010 and 2.60.010 are shown in a redline version of those sections attached hereto as Exhibit A.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Tigard Municipal Code Section 1.01.010 is revised to read as follows:

1.01.010 Title

The Tigard Municipal Code is adopted as the official city code of the city of Tigard. The code shall be cited as the “Tigard Municipal Code,” published under general authority of the city council and maintained as provided in this chapter by the city recorder.

SECTION 2: Tigard Municipal Code Chapter 1.01 is amended by adding a new section 1.01.080 to read as follows:

1.01.80 Editing of Code

In preparing the codified editions of ordinances for publication and distribution the City Recorder shall not alter the sense, meaning, effect or substance of any ordinance, but, with such limitations, may renumber sections and parts of sections of the ordinances, change the wording of headings, rearrange sections, change reference numbers to agree with renumbered chapters, sections or other parts, substitute the proper subsection, section or chapter or other division numbers, strike out figures or words that are merely repetitious, change capitalization for the purpose of uniformity, and correct manifest clerical or typographical errors.

SECTION 3: Tigard Municipal Code Section 1.01.060 is amended to read as follows:

1.01.060 Constitutionality.

If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Code. The council declares that it would have passed this Code, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

SECTION 4: Tigard Municipal Code Chapter 1.12 is amended by adding a new section 1.12.040 to read as follows:

1.12.040 FILING DEADLINE FOR INITIATIVE PETITIONS

(1) No later than the 90th day after the prospective petition for an initiative for a city measure is filed with the City Recorder, the initiative petition shall be deposited with the City Recorder for signature verification. Within ten days after a duly prepared petition is deposited with the City Recorder, the City Recorder shall verify the number and genuineness of the signatures and the voting qualifications of the persons signing the petition by reference to the registration information in the office of the Washington County Clerk. If the City Recorder determines that there are an insufficient number of signatures, the petition shall be returned to the sponsor or person offering the petition for filing. The petition may be refiled at any time within 90 days of the filing of the prospective petition.

(2) No initiative petition shall be accepted for filing unless:

- (a) It contains 100 percent of the required number of signatures;
- (b) All signatures were obtained within 90 days after the dated the prospective petition was filed;
- (c) As circulated, it complies with the requirements of state statutes; and
- (d) The initiative is for a legislative measure within the authority of the City.

SECTION 5: Tigard Municipal Code Section 2.56.010 is amended to read as follows.

2.56.010 Appointment and removal.

The office of recorder of the city of Tigard, as provided by Section 10 of Chapter III of the Charter, shall be filled by appointment by the consent of the council and shall be upon the

advice of the city manager. The recorder shall be appointed solely on the basis of qualifications and experience and without regard to political considerations. Appointment and removal of the recorder shall be upon the advice of the city manager and require the prior consent of a majority of the full council recorded at a public meeting. Cause shall not be required for removal of the city recorder.

SECTION 6: Tigard Municipal Code Section 2.60.010 is amended to read as follows:

2.60.010 Appointment and removal.

The city attorney shall be appointed by the consent of the council. The attorney shall be appointed solely on the basis of qualifications and experience and without regard to political considerations. Appointment and removal of the attorney shall require the prior consent of a majority of the full council recorded at a public meeting. Cause shall not be required for removal of the city attorney.

SECTION 7: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2001.

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2001.

James E. Griffith, Mayor

Approved as to form:

City Attorney

Date

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Exhibit A
Ordinance No. 01-____
Redline Version of Amended Sections

Deleted language is shown by strikethrough, new language is bold and underlined.

1.01.010 ~~Adoption.~~ Title

~~The codification of general ordinances of the City of Tigard as prepared and published by Book Publishing Company of Seattle, Washington, a bound copy thereof being hereto attached and by reference made a part hereof, is adopted and enacted as the "Tigard Municipal Code of 1972" and may be cited as such in all proceedings within the purview thereof.~~

The Tigard Municipal Code is adopted as the official city code of the city of Tigard. The code shall be cited as the "Tigard Municipal Code," published under general authority of the city council and maintained as provided in this chapter by the city recorder.

1.01.060 Constitutionality.

If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Code. The council declares that it would have passed this Code, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional, ~~and if for any reason this Code should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.~~

2.56.010 Appointment and removal.

The office of recorder of the city of Tigard, as provided by Section 10 of Chapter III of the Charter, shall be filled by appointment by ~~the mayor with~~ the consent of the council and shall be upon the advice of the city ~~administrator~~ **manager**. The recorder shall be appointed solely on the basis of qualifications and experience and without regard to political considerations. Appointment and removal of the recorder ~~by the mayor~~ shall be upon the advice of the city ~~administrator~~ **manager** and require the prior consent of a majority of the full council recorded at a public meeting. Cause shall not be required for removal of the city recorder, ~~except for that employee serving as the incumbent city recorder as of the effective date of ordinance 86-64.~~

2.60.010 Appointment and removal.

The city attorney shall be appointed by ~~the mayor with~~ the consent of the council. The attorney shall be appointed solely on the basis of qualifications and experience and without regard to political considerations. Appointment and removal of the attorney ~~by the mayor~~ shall require the prior consent of a majority of the full council recorded at a public meeting. Cause shall not be required for removal of the city attorney.